TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~332~~ 132

THE SHIP SAPPHIRE, ETC.—G. C. TRUEFANT AND J. R. TIBBETTS, CLAIMANTS, APPELLANTS,

vs.

NAPOLEON III, EMPEROR OF THE FRENCH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED DECEMBER 7, 1869.

11.

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INDEX.

	Original.	Print.
Libel	1	1
Claim	10	4
Monition	14	5
Answer	17	6
Notes of testimony	23	9
Deposition of George Sprague	46	18
William H. Aeaston	58	21
C. M. Patterson	66	24
Frank K. Waterhouse	80	31
A. P. Boyd	91	35
Order, reference to commissioner	110	42
Report of commissioner	116	43
Decree of district court	128	48
Notice of appeal	130	49
Certificate of clerk	131	49
Bond	132	50
Appeal to circuit court	135	51
Submission	139	52
Final decree	141	53
Appeal	143	53
Citation and service	147	55
Stipulation	149	55
Clerk's certificate	150	55

1 *Libel.—Apostles.*

In the district court of the United States in and for the northern district of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III, Emperor of the French, libellant,
vs.
THE SHIP SAPPHIRE.

To the Hon. Ogden Hoffman, judge of the district court of the United States in and for the northern district of California:

The libel of the Emperor of the French, Napoleon III, Emperor of the French, owner of the French transport Euryale, against the ship Sapphire, her tackle, boats, apparel, furniture, and cargo, and against all persons lawfully intervening for their interest, in a cause of collision civil and maritime, alleges as follows:

First. That your libellant, before and at the time hereinafter mentioned, and now is the sole and exclusive owner of the French transport Euryale, her tackle, boats, apparel, and furniture.

2 Second. That said transport Euryale also is a national vessel belonging to and in the employ of the imperial government of France, and is a valuable vessel, and built at great cost, and was at the time herein referred to, with her tackle, apparel, boats, and furniture, worth the sum of $60,000 00.

Third. That on Sunday the 22d day of Dec'r, 1867, and prior thereto, the said transport Euryale, with her tackle, apparel, and furniture, was safely moored in the harbor of San Francisco, where she had a perfect right to be, the said vessel being then, and also at the time when she was run into as hereinafter mentioned, tight, staunch, and strong, and in every respect well manned, tackled, apparelled, and appointed, and having the usual and necessary complement of officers and men; that on Sunday, on the 22d of Dec'r, 1867, watch was set on deck said vessel, and proper lights were fixed and so remained during the whole of the preceding night and morning of said day.

Fourth. That during the evening and morning of said day,
3 and while said Euryale was safely moored as aforesaid, the said ship Sapphire, a vessel of about fourteen hundred tons, and worth about the sum of $100,000 00, was lying in said harbor of San Francisco close to said Euryale, about three hundred yards southeast from her off her larboard bow, both vessels riding with their heads to the southeast with the same swing; that about two o'clock in the morning of said day the Sapphire was noticed to be dragging her anchors; that about fifty minutes past four o'clock on said morning she struck the Euryale on the starboard side with a very violent shock, the wind was blowing heavily from the southeast, and she continued to strike the Euryale with great force and violence, and said Euryale being a vessel of only about four hundred and fifty tons, and in ballast, those on board became apprehensive that she would be sunk; that while in said collision the spars and rigging of both said vessels became entangled; that the bowsprit of the Euryale was broken off close to the bows, and carried away, with all its rigging, the starboard spare anchor wrenched
4 from its support and fastenings, and carried overboard, the foremast broken and carried away flush to the deck, breaking its spars, and crushing the cook-house, the maintop gallant-mast, and

maintopmast broken, and the head of the lower mast sprung, two boats crushed on the davits, and carried overboard, together with their apparel, the rigging of the mizzenmast cut, and the gaff broken, a portion of the sheathing torn off, and one of the beams in the lower deck broken, and the upper portion of the hull on the starboard side injured. Such are the serious damages so far as can be ascertained at present without a survey.

Fifth. That the said ship Sapphire at said time had not a proper look-out and watch to guard against the danger of said collision; that she was not then properly manned and fitted, and had not on board the necessary complement of officers and men to meet such emergency, and that the collision aforesaid was occasioned wholly by the negligence, and inattention, and want of proper care and skill, on the part of the said ship Sapphire, her master and crew, and not from any fault, omission, or neglect on the part of the said Euryale, her master and crew.

5 Sixth. That the collision would not have occurred if the ship Sapphire's cables had been properly adjusted to meet the strength of the wind and sea; that the master and crew of the Euryale did everything in their power to avoid the collision, and that after the said ship Sapphire had struck the Euryale, they attempted to get clear of the said ship Sapphire without being able so to do; that the master of the said Euryale then at once sent for the steam-tug , which came to her assistance and hauled the Euryale clear from the said ship Sapphire, for which services the libellant will be obliged to pay, the amount of which the libellant is at present unable to state, which said service, labor, and damages and expenses were occasioned by the negligence, want of skill, and improper conduct of the persons on board the ship Sapphire, and not through any fault, negligence, or improper conduct on the part of the persons on board of the Euryale, her master and crew.

Seventh. That for such injuries so received from such collision and expense which the master of the said Euryale has been put to on

6 account thereof, this libellant is entitled to receive the sum of $15,000 00.

Eight. That the said ship Sapphire, her tackle, &c., are now in the port of San Francisco, and within the admiralty and maritime jurisdiction of this honorable court.

Ninth. That all and singular the premises are true.

Wherefore libellant prays that process, in due form of law and according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, boats, furniture, and cargo, and that all persons claiming an interest therein may be cited to appear and answer upon oath all and singular the matters aforesaid, and that the honorable court will be pleased to decree to libellants the sum of $15,000 00 for the damages received by said Euryale, and that the said ship Sapphire, her tackle, apparel, boats, furniture, and cargo, may be condemned, and that the libellant may have such other and further relief as in law and justice they may be entitled to receive.

G. F. & W. H. SHARP,
Proctors for Libellant.

7 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Captain Auguste Parrayon, being duly sworn, deposes and says that

he is the master of the said ship Euryale; that he has read the foregoing libel; knows the contents thereof; that the same is true of his own knowledge except as to these matters which are therein stated on his information or belief; and that as to those matters that he believes it to be true.

A. PARRAYON.

Subscribed and sworn to before me this 24th day of Dec., 1867.

A. D. SMITH, *U. S. Com.*

(Endorsed:) Filed Dec. 24th, 1867.

GEO. E. WHITNEY, *Clerk*,
P'r A. D. SMITH, *D. C.*

8 *Stipulation for costs, (libellants'.)*

UNITED STATES OF AMERICA:

District court of the United States for the district of California.

Whereas a libel was filed in this court on the 24th day of Dec'r, in the year of our Lord one thousand eight hundred and sixty-seven, by the Emperor of the French against the ship Sapphire, her tackle, &c., &c., for reasons and causes in the said libel mentioned, and the said Emperor of the French, and Eugene Dubedat, and Alphonso Bourgowig, his sureties, parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the said libellant, or his sureties, execution may issue against their goods, chattels, and lands for the sum of five hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the libellant above named shall pay all costs and charges that may be awarded against them in any decree by this court or, in case of appeal, by the appellate court.

E. DUBEDAT.
A. BOURGOWIG.

Taken and acknowledged this 24th day of December, 1867, before me.

A. D. SMITH, *U. S. Commissioner.*

9 DISTRICT OF CALIFORNIA, *ss:*

Eugene Dubedat and Alphonso Burgowig, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his debts and liabilities.

E. DUBEDAT.
A. BOURGOWIG.

Sworn to this 24th day of Dec'r, 1867, before me.

A. D. SMITH, *U. S. Commissioner.*

Filed the 24th day of Dec'r, 1867.

GEO. E. WHITNEY, *Clerk*,
P'r A. D. SMITH.

10 *Claim.*

In the district court of the United States for the northern district of California.

NAPOLEON III, EMPEROR, &c., }
vs. }
SHIP SAPPHIRE, &c. }

To the Honorable Ogden Hoffman, judge of the district court of the United States for the northern district of California:

G. C. Truefant and J. R. Tebbetts, owners of the ship Sapphire, her tackle, apparel, and furniture, above mentioned, intervening for their interests in the said ship Sapphire, her tackle, apparel, and furniture, appear before this honorable court, by A. P. Boyd, the master of the said ship, their duly authorized agent, and claim the said ship Sapphire, &c., and state that they are the true and bona-fide owners thereof, and that no other person is the owner thereof.

And therefore the said claimants pray that this honorable court will be pleased to decree a restitution of the same to them, and otherwise right and justice to administer in the premises.

San Francisco, Dec'r 26th, 1867.

TRUEFANT & TIBBETTS,
By A. P. BOYD.

11 H. & C. MCALLISTER,
Proctor for Clm't.

(Endorsed:) Filed Dec'r 27th, 1867.

GEO. E. WHITNEY, *Clerk*,
By A. D. SMITH, *D. C.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

A. P. Boyd, being duly sworn, deposes and says that he is the master of said ship and the agent of the claimants above named; that he is duly authorized to interpose this claim in their behalf; that he has read the foregoing claim, and knows the contents thereof; that the same is true, of his own knowledge, except as to the matters therein stated on information and belief; and as to those matters that he believes it to be true.

A. P. BOYD.

Sworn to and subscribed before me this 27th day of Dec'r, A. D. 1867.

A. D. SMITH, *U. S. Com'r.*

12 *Stipulation for costs, (claimants'.)*

UNITED STATES OF AMERICA:

District court of the United States for the district of California.

Whereas a libel was filed in this court on the 24th day of Dec'r, in the year of our Lord one thousand and sixty-seven, by the Emperor of the French against the ship Sapphire, her tackle, &c., for reasons and causes in the said libel mentioned; and whereas [and the said] G. C

Truefant et al., and H. B. Williams and H. P. Blanchard, his sureties, parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the said claimants or his sureties, execution may issue against their goods, chattels, and lands for the sum of five hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the claimants above named shall pay all costs and charges that may be awarded against them in any decree by this court or, in case of appeal, by the appellate court.

A. P. BOYD.
H. B. WILLIAMS.
H. P. BLANCHARD.

Taken and acknowledged this 27th day of Dec'r, 1867, before me.
A. D. SMITH, *U. S. Com'r.*

13 DISTRICT OF CALIFORNIA, *ss:*

H. B. Williams and H. P. Blanchard, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his debts and liabilities.

H. P. BLANCHARD.
H. B. WILLIAMS.

Sworn to this 27th day of Dec'r, 1867, before me.
A. D. SMITH,
United States Commissioner.

Filed the 27 day of Dec'r, 1867.
A. D. SMITH, *Dep. Clerk.*

14 *Monition.*

DISTRICT OF CALIFORNIA, *ss:*

{ SEAL OF U. S. DIST. COURT. } { NORTH'N DIST. OF CAL. }

The President of the United States of America to the marshal of the United States for the district of California, greeting:

Whereas a libel hath been filed in the district court of the United States for the district of California, on the 24th day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by the Emperor of the French, Napoleon III, Emperor of the French, against the ship Sapphire, her tackle and furniture, &c., &c., in a cause of damages, civil and maritime, for the reasons and causes in the said libel mentioned, and praying the usual process and motion of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and, all proceedings being had, that the said ship or vessel, her tackle, &c., may, for the cause in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said ship or
15 vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give

due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court to be held in and for the district of California, on the 7th day of January, 1868, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Ogden Hoffman, judge of said court, at the city of San Francisco, in the district of California, this 24th day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-second.

GEO. E. WHITNEY, *Clerk*,
By A. D. SMITH, *Deputy Clerk*.

G. F. W. H. SHARP,
Proctors for Libellant.

16 (Endorsed:) Montion returnable Jan'y 7th, 1868. Issued Dec'r 24th, 1867. Filed Jan'y 7th, 1868.

GEO. E. WHITNEY, *Clerk*,
By S. NEAL, *Deputy Clk*.

Order.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Tuesday, the seventh day of January, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Ogden Hoffman, judge.

THE EMPEROR OF THE FRENCH
vs.
SHIP SAPPHIRE, ETC.

And now, at this day, on motion of proctor for libellant herein, ordered that monition returnable this day be filed, and proclimation be made; which is accordingly done.

On like motion, ordered that a default be entered against all persons not in court.

On motion of McAllister, proctor claimants herein, leave given
17 to answer within five days.

Answer.

In the district court of the United States for the district of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III,
vs.
THE SHIP SAPPHIRE, &C.—TRUEFANT AND TIBBETS, claimants.

To the Honorable Ogden Hoffman, judge of the district court of the United States for the district of California:

The answer of Truefant and Tibbets, of Boston, Massachusetts, inter-

vening for their interest in the ship Sapphire, her tackle, apparel, and furniture, to the libel of the Emperor of the French, Napoleon III, answers and alleges as follows:

First. That claimants are ignorant of the matters set forth in the first article of said libel, and therefore deny the same, and pray that libellant may be put to the strict proof thereof.

Second. That claimants are ignorant of the matters set forth in the second article of said libel, and therefore deny the same, and pray that libellant may be put to the strict proof thereof.

18 Third. That the matters contained in the third article of said libel are in a great part falsely alleged, and therefore claimants deny the same, and allege the truth to be as is hereinafter set forth.

Fourth. That the matters contained in the fourth article of said libel are in a great part falsely alleged, and therefore claimants deny the same, and allege the truth to be as is hereinafter set forth.

Fifth. That the matters contained in the fifth article of said libel are falsely alleged, and claimants deny the same, and allege the truth to be as is hereinafter set forth.

Sixth. That the matters contained in the sixth article of said libel are falsely alleged, and claimants deny the same, and allege the truth to be as is hereinafter set forth.

Seventh. That claimants are ignorant of the matters set forth in the seventh article of said libel, and therefore deny the same, and pray the libellant may be put to strict proof thereof.

Eight. That claimants admit the matters set forth in the eight article of said libel.

Ninth. But claimants allege the truth and fact to be that, at the dates set forth in the libel, the said ship "Sapphire" and the

19 said transport Euryale, mentioned in the libel on file herein, were both anchored off the port of San Francisco, about three hundred yards distant from each other, the said ship Sapphire being moored in a southeasterly direction from the said transport "Euryale;" that during the evening of the 22d and the morning of the 23rd day of December, A. D. 1867, a southeasterly gale of unsual violence and duration occured; that at that time the said ship "Sapphire" was loaded ready for sea, and had been towed into the stream prior to her departure for Liverpool.

That at said dates she had her full complement of men and officers on board, and was fully and properly manned and equipped; and that, during the whole of said gale and until the occurence of the collision alleged in said libel, all the officers and crew of said ship "Sapphire" were on deck ready to adopt and use any and all measures to prevent any danger or accident happening to said ship "Sapphire."

That said ship "Sapphire" swung at her anchor during said time, without dragging at all; and that, between four and five o'clock on the morning of the 23rd day of December, A. D. 1867, the said transport "Euryale" ran into and collided with the said ship Sapphire, without any fault or negligence on the part of the officers or any of them, or the crew or any of them, of said ship "Sapphire."

20 That whatever damage was done to the said transport "Euryale" or said ship "Sapphire" occured, and was occasioned solely and exclusively, by reason of the fault and negligence of the officers of said transport "Euryale."

Tenth. That all and singular the premises are true.

Wherefore claimants pray that this honorable court would be pleased

to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

H. & C. McALLISTER,
Proctors for Cl'm'ts.

Subscribed and sworn to before me this day of February, A. D. 1868.

The verification of the foregoing answer is hereby waived.
Dated this 18th February, A. D. 1868.

G. F. & W. H. SHARP,
Att'y for Pl'ff.

(Endorsed:) Filed Feb'y 20th, 1868.

GEO. E. WHITNEY, *Cl'k*,
By S. NEAL, *D. C.*

21 *Order.*

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Thurday, the nineteenth day of March, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Ogden Hoffman, judge.

THE EMPEROR OF THE FRENCH
vs.
SHIP SAPPHIRE.

The hearing of the cause is now proceeded with, having heretofore been specially set for this day, Messrs. Sharp and Andros appearing on behalf of libellants, and Cuttler McAllister, esqr., on behalf of claimants.

C. H. Harrison, Aug'e Parrayon, Joseph Le Noir, and John Deveaux were sworn and examined as witnesses on behalf of the libellants; and the further hearing of this cause was postponded till to-morrow, 11 o'clock a. m.

22 At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Friday, the twentieth day of March, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Ogden Hoffman, judge.

THE EMPEROR OF THE FRENCH
vs.
SAPPHIRE, ETC., ETC.

The hearing of this cause is now continued from yesterday. Paul Brazier and A. C. Frées were sworn and examined as witnesses on behalf of the libellants, and the further hearing of this cause was continued to Saturday, 21st.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Saturday, the twenty-first day of March, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Ogden Hoffman, judge.

23 THE EMPEROR OF THE FRENCH
vs.
SAPPHIRE, ETC., ETC.

The hearing of this cause is now continued from yesterday. C. Goodhaw, C. E. McNear, W. F. Peck, E. Mayo, M. Noyce, L. L. Batchelor, and E. R. Warshaw were sworn and examined on behalf of claimants. On motion, cause is now submitted on briefs.

Notes of testimony.

THE EMPEROR OF THE FRENCH
vs.
THE SHIP SAPPHIRE. } Collision.

C. H. HARRISON:

Am Mare Island pilot; for 17 years. I know the Euryale. Took her to Mare Island in December, shortly before Christmas. Took her to her anchorage off Pacific st. wharf. Saw her daily after that; she was about 600 yards from the end of the wharf. She had 45 fathoms chain; the shackle just beyond the bitts. The Sapphire was not anchored there at that time. Saw the vessel immediately after collision. Saw her just as she got clear of the ship and was being towed down to North Beach. I had been particular in anchoring the "Euryale;" her mizzenmast
24 on the ebb-tide lined with the middle of Pacific st. After the collision I found the "Sapphire" lying with her foremast in exactly the same position on the ebb-tide. This was in the morning after collision. She lay there some days. She then had to move to enable the "Euryale" to recover her anchors, which were right under the "Sapphire." It blew harder the next day than on the night of collision. The Euryale was ready for sea. The Sapphire was also ready for sea. The Euryale had about 45 fathoms in the water.

Cross-examined.

Did not notice the relative positions of the vessels before the collision The Euryale drew either 13 or 15 ft.

AUGUST PARYON:

I am lieut. of French navy, commanding the Euryale. She is a French national vessel. Have commanded her 15 months. I returned from Mare Island on the 14th Dec. I had been thoroughly repaired. She was anchored by Capt. Harrison about 6 or 700 yards. I can give more readily the weight, because I was obliged to replace one which I had lost. The one I bought weighed 2,500; the one I lost weighed 1,015 lbs. more; my chain 4¼. My port anchor was down on the night of the collision; 56 fathoms the bitts the last time I was on board. I quitted at
4 o'c'k on Saturday, the barometer being very high; the weather
25 cloudy; light wind from S. E.

The vessel had not changed her anchorage at all. I was called on Sunday. I heard a knock at my door. My first impression was that the "Sapphire" was afoul of us. I had usually seen my ship from Pacific st., except the bowsprit. When I went down on the morning of the collision the Sapphire was in her place. This diagram was made by myself; it shows the position of the vessels before the collision. When I arrived at the quai the Sapphire was in the place where the Euryale

had been anchored, a little to the northward of it. At that moment all the vessels headed to the wind, especially the Sapphire. When I arrived at the wharf the Euryale was already going towards Alcatraz, in tow of a steamer. Capt. Boyd gave me an account of this accident. I remember it literally. I was breakfasting with Mr. Dubedat. Capt. Boyd came to see me. He said it was very unlucky for him that the "Euryale" had fallen on him; but that he would not bring any suit against her. I then remarked to him, "Captain, you are a sailor, perhaps better than myself; but you forget that I am one, that I was anchored to leeward of you, and that with a S. E. wind I could."——The captain re-
26 plied, "That is true. It is I who got afoul of you; it was not my fault, it was the fault of the weather;" and that if I should commence suit against him, he would be discharged by his owners; that he was very unhappy.

Mr. Dubedat was present at all the conversation. He proposed, on my part, to go before the consul, that he should there repeat what he had just said, and the matter could be arranged readily; that as I had more strict account to give to my government than he had to his owners, that if he would not go before a consul I should be obliged to sue him before the American tribunal. It was my only means of justification. Capt. Boyd immediately saying, "I'll see about it." I have not seen him since.

My total reparation amounts to 14,000 and some odd dollars.

Cross-examination.

My ship is in exactly the same condition as before, except my masts are now new while the former ones were five years old. I have replaced some of the rigging which could not be used. I made the repairs with as much economy as possible. I made a new bowsprit out of my old mainmast. I diminished the size of my tops rather than make new ones, as the old could be made to do. No charge is made for dry
27 dock. I left my 2nd in charge. The distance between the "Sapphire" and Euryale was between 2 and 3 hundred yards. The Euryale was nearest the wharf. This diagram correctly indicates the position of the vessels before collision. Their position after the collision I derived from my 2nd. We drew 13 feet. I am sure that with the weight of my anchors I should have been perfectly safe. We had about ½ of our cargo to take on board.

J. Le Noir:

I am 3rd officer on board the "Euryale;" have charge of chronometers; have been in the ship 4 years. I was on duty at the moment of collision; the collision occurred at 10 minutes after 5 o'clock. The wind became very strong about 2½ o'clock.

It was very violent at the moment of the collision. It was also raining very hard when I last noticed the Sapphire; it was about 3 o'clock. After that the weather became so thick that I could not see her. At 2½ I was informed by another officer that the wind was freshening. About half an hour after I was told by the chief that the "Sapphire" was approaching us. I came on deck and saw that she had come nearer. I asked the man whether the "Sapphire" had paied out chain. He
28 said yes, they had given her chain. I said it was then; not supposing that she had come nearer. I ordered the man to look out for the boats and ladders over the side. I then went below. About 20 minutes after the same man came to tell me that the "Sapphire" had

dropped her 2nd anchor. I said I was very glad, as she would not come toward us any more. I next came on deck at 5 o'clock. The "Sapphire" was coming down on us. The weather was very bad. 2 or 3 minutes before collision I ordered the jib hauled. The "Sapphire" had not yet touched us. She was on our starboard side, and as she had the wind aft, I thought I might have time to hoist my jib and haul the sheet to starboard to make the vessel take a sheer starboard. The "Sapphire" would not have touched if her anchor had not kooked in our chain; she would have passed to starboard.

The "Sapphire" struck about the middle of the main rigging; her starboard bow struck us; we were struck on the starboard side. When I hoisted the jib our vessel did not sheer. My object was to give the "Sapphire" a wider berth. The anchor fouled with our chain almost at the same moment. I think we would have avoided collision if the anchor had not fouled. The effect of her anchor catching our chain was
29 to bring the "Sapphire" astern of us and prevent us from getting away. We had 54 fathoms of chain out; 56 at the bitts. From the time I went on deck first to moment of collision the Euryale had not changed her position. I ordered the jib hoisted the moment I came on deck.

The "Sapphire" was about 30 fathoms off, advancing towards the Euryale. Had a light on the flag-staff of bowsprit; it was a white light. (Admitted that "Euryale" had lights.) We could have held with the anchors we had with very much less than 56 fathoms chain. We had starboard anchor out. I had remarked the "Sapphire" distant about 120 fathoms, she outside and a little on our port bow, when we tailed down.

She had anchored there on the 17th, 3 or 4 days after us. The "Cleopatra" was astern of us, a little further off than the "Sapphire."

The diagram represents the respective position of the vessels.

We were taken in tow about 2 hours after collision; have not seen "Sapphire" since.

Cross-examined.

I was the officer of the deck on that night. I had under me the chief of division, a petty officer. The tonnage of our vessel is 450 tons. 7 or 8 men composed watch. Our whole crew consists of 42 men, all hands included. Three divisions were on duty; one from 11 to 12, one
30 from 2 to 5, and at reveillee all hands turned out. The chief of division from 11 to 12 was Anfetto; from 2 to 5 was Deverau. The watch on duty was the only one on deck. I did not give my anchor more chain at any time during that night. Up to 3 the vessel headed to S. E.; the "Sapphire" headed in the same. The flood was just making. The wind had begun to be very strong. The "Sapphire" had one light in her starboard fore-rigging. The vessels had been heading in the same way all the night. When I came on deck I took a turn all around the vessel; the weather was fully clear. The "Sapphire" seemed to have got nearer to us, but I could not judge how much nearer. I should say she had paid out more chain and thus come nearer, according to the report of my chief. I could see her hull. About this time the weather became squally; could only see her lights. The squalls lasted 8 or ten minutes. This weather lasted until 7 in the morning, and indeed all day. I remained on deck about 10 minutes. I had been below about 10 or 15 minutes when the chief reported that "Sapphire" had let go her 2nd anchor. The steps and boats were on starboard side. I ordered

the man to look after them, to hoist them up higher if sea increased.

When I went below the "Sapphire" was about 11′ on our port
31 bow; at 5 she was in same position as when I went below; at 3
heading to S. E. The flood commenced running about 3 o'clock. I am certain we had not changed our position since 3 o'clock. When I came on deck at 5 o'clock the "Sapphire" was heading N. N. W. We headed them S. E. Her bows were about opposite our starboard main rigging; she was then 30 feet off. I hoisted my jib to sheer my bows to port and let her pass by. She would have done so if she had not caught our chain. She came between us and the town.

The "Sapphire" had come down with the wind and against the current. Her starboard bow struck us on our starboard side just abaft the mainmast. I was on the top-gallant forecastle giving orders to hoist jib. It was very dark. The "Sapphire" carried away our spanker-gaff. I saw no one on the "Sapphire" for 7 or 8 minutes. No confusion on our ship. They called to us to haul down the jib; it was only up about a foot at the time, we had hoisted it about 6 feet. I gave the order to hoist jib about 7 minutes after 5.

It had not been hoisted up to the moment of collision; am sure that it
had not been hoisted enough to effect the ship. I continued to hoist
32 my jib two or three minutes. I was raised about six feet when
the 2nd came on deck and ordered it lowered. I am sure that the jib was not then higher than 6 feet. The vessels were then in contact. I am sure that one vessel headed to the wind all the time. I had a compass in my room. If she had changed her position I should have gone on deck. I can swear that she headed S. E. all the night, as shown by the compass in my cabinet. The flood-tide had no effect; the wind was too strong. The "Sapphire" was deeper and the current affected her more. As the wind was that might, a light vessel would head to the wind, and a loaded vessel might tail across tide. When the tug came we slipped our chain & bouyed it; let go the whole of the chain.

When the tug took us the "Sapphire" headed E.xN. E. & the "Euryale" W. or N. W.; can't be exact.

The captain's cabin is a house on deck. We had two boats on our davits. Cabin 6 or 7 ft. high. Galley also on deck.

J. J. DEVEAUX, chief of division:

Went on deck at 2 o'clock. Saw the "Sapphire" when I went on deck. She was in same position as she had been previously. At 2½ she changed
her position; they gave her more chain about that time. I reported
33 this to Mr. J. Jénon; he came on deck. At 3 o'c'k I made another
report; they were giving her more chain. She had two anchors out at 4 o'clock. They had given her more chain twice. At 2 o'clock the "Sapphire" was about three hundred ft. off; at 4 o'clock she was some 120 feet nearer, (30 to 40 metres.) At 2 o'clock the weather was clear, but at 4 I could see her more distinctly; the weather was very thick. The "Euryale" had not changed her position between 2 & 4; I knew this by the shore-lights and the position of a vessel astern. I received from the chief whom I relieved, to keep a good look-out to see if ship dragged and changed her position; also to see if other ships dragged. At 2 o'c'k the "Euryale" headed to the wind; she did not change her position up to moment of collision. I saw the "Sapphire" approach. Mr. Le Noir came on deck 2 or 3 minutes before we were struck; we were struck near starboard main-chains by "Sapphire" starboard bow. The "Sapphire" came alongside and changed the position of the "Euryale." I relieved Aufuttee. The jib

was hoisted about 4 feet at the moment of collision. The order had been given two or 3 minutes before collision. Mr. Le Noir was on deck two or three minutes. The collision occurred a few seconds after. The jib was hoisted 3 & 4 feet. We ceased to hoist the jib the moment
34 the vessel began to swing together; am certain that it was never higher than 3 or 4 feet.

Cross-examined.

I am a sailor of the 2nd class. Was chosen by the captain.

At 5 o'clock only the guard or watch was on deck. The wind was so strong that we could not hoist the jib with 8 men, which composed the watch. I had charge of the deck when Mr. Le Noir was below. I was looking out with two others; we were on the top-gallant forecastle. At 4 o'clock I made report that "Sapphire" was approaching. I made a report at 5, or a few minutes after 5. I made no report between 4 and a few minutes after 5.

I told Biveaux, who reported that they were about to breakfast, to report that the "Sapphire" was approaching. At 5 o'clock she was very near to us. Between 4 & 5 she did not change her position. From about ¼ of an hour after she dropped her 2nd anchor up to 5 minutes. At 4¼ the "Sapphire" was on our starboard beam; she remained there until a few minutes before 5, when I sent word to Mr. Le Noir. There was no change in "Euryale" position. During these ¾ of an hour the "Sapphire" was between us and city. Mr. Le Noir must have seen the vessels in that position. Bioux and Le Galle were on the look-
35 out with me. We had only time to hoist jib. The "Sapphire" lay about 60 feet distant on our starboard beam during these ¾ths of an hour; gale blowing; sea very heavy.

Am positive I heard the persons on "Sapphire" pay out chain and let go 2nd anchor. Could not have been on the "Cleopatra."

Heard no one cry out on "Sapphire" as we came near.

PAUL BRAZIER:

I am 1st officer of "Euryale;" have held it one year. Was on deck from 10 to 11. I next came on deck a few minutes after the collision. I ordered the jib hauled down. The vessels were then in contact. The forepart of the "Sapphire" was on the stem of the "Euryale;" vessels lying alongside of each other at that moment. The "Euryale" was heading towards the town, and to windward of the "Sapphire." The jib was hoisted about 6 or 7 feet; they had stopped hoisting when I gave the orders. We first had to make fast to the "Sapphire." My object was to make them roll together. They refused this on board the "Sapphire." When I made this request my men went forward with hawsers and fenders. My men tried to throw hawsers on the "Sapphire," and they refused to receive it. I made this request as soon as the jib
36 was lowered. As soon as I ordered the jib lowered I ordered the spanker hoisted. At this moment the spanker-gaff was broken, and the mizzen-rigging carried away. I could not therefore hoist spanker. I then told them to give the "Sapphire" more chain; they said they could not, because they had no more chain to give her. I was then that I asked them to take a hawser, and they refused. The "Sapphire" then hoisted her mizzen-topsail. The "Sapphire" then began to drag astern. She rubbed along our starboard side, and finally came athwart our bow, breaking our bowsprit.

She remained in this position a minute or two; she then came back

alongside of us to her former position, and so remained until the arrival of the tug.

The "Euryale" not being able to do anything, as all her braces were carried away, the tug made fast to our stern and drew us apart.

When the tug came up we were heading to S. W. We had not budged from our anchorage. I know this because I could see the shore. The tug came up at about 6 or 6½.

I remarked the position of the "Sapphire;" the positions are correctly indicated by this diagram., About 250 metres or 125 fathoms.
37 She lay to windward about a point or a point and ½ on our port bow. When I left the deck at 10½ we were heading S. E. The ordinary weight of anchor for a vessel of our size would be 800 rele., or 1,750 lbs. The anchor we had down weighed about 3,300 Americans lbs.

Cross-examination.

I was in bed at the moment of collision. I ran instantly on deck. The intention of the 3d officer was to sheer the vessel off and avoid the collision. If the "Sapphire" had not come so quick it might have succeeded, or evan if she had not hooked in the chain of the Euryale. I think the diagram represents correctly the manner in which her anchor caught our chain. I think if the jib had been hoisted ½ an hour, provided the "Sapphire" had not hooked our chain.

If I had put my jib-sheet to starboard, I might have sheered to port the length of the chain. The vessels did not drag while in contact. The tide had no effect on our vessel. The vessels were in contact about an hour and a half. No report was made to me that the "Sapphire" was dragging on to us. I was in command of the ship. My object in
38 making the vessels fast was to cause them to roll together. The "Sapphire" was 4½ higher out of the water than the "Euryale." When I came on deck the "Sapphire" was to leeward of the Euryale. They began to hoist the mizzen-topsail of "Sapphire." About 15 minutes afterwards the tug was sent for by a boat from the "Euryale," with some one from the "Sapphire." I was told it was the captain of the "Sapphire." He said he had neither boat nor men.

ANDREW CH. FRÉES:

Am stevedore and lighterman.

I took up the anchor of the "Euryale." I went down—found that the "Sapphire" in heaving in her chain had brought up the bight of the other chain.

The bight of the Euryale chain was over the fluke of the "Sapphire's" anchor. There were half a dozen turns.

The next morning being calmer, I went and got the anchor. When I hove in the chain till within about 40 fathoms of the anchor, I found the "Sapphire's" port anchor fouled. I had a very heavy purchase. Had raised the Aquilla's anchors with it, (4,000 lbs.;) broke the purchase, the anchor had a pretty good hold. When I got the anchor of the "Euryale" is seemed to me in the same position. My opinion is that the "Sapphire's" starboard anchor fouled with the "Euryale's"
39 chain; the starboard anchor of "Sapphire" was fouled with "Euryale's" chain about 50 fathoms from "Euryale's" anchor. Her port anchor was fouled about 20 fathoms from anchor. I think the "Sapphire" must have hung to this anchor. My opinion always was that the port anchor got foul by dragging. She picked up the chain with

her port anchor first and afterwards with her starboard. The "Sapphire" ought to draw 20 to 21 feet.

EUGENE DUBEDAT:

I was present at a conversation between Captain Boyd and captain of "Euryale." Captain Boyd, it was easy to see, came to see Parayon. He came to our table and the first thing he said was that the "Euryale" had come on to "Sapphire." Captain P. pointed out the position of the ships, and asked him if it was possible that the "Euryale" could have come on the "Sapphire." Captain Boyd admitted this. He said no, that it was not possible. He said it was very unfortunate for him, that he would lose his position. Captain P. replied that it was still more unfortunate for him, because his future as a French officer depended on this accident. We went out, and as I saw that Captain P. did not want a law-suit, I asked Captain P. if this ought
40 not to be taken as an overture on the part of Captain B. I then took Captain B. aside and told him we were going to sue him, but it concerned a government vessel, he might arrange with the French consul, and that I thought it for his advantage to do so. He left me immediately, saying, "I'll see about it." This conversation occurred in about ½ an hour. It was in English.

ANDRÉ BIOUX:

Sailor on "Euryale." Was on watch the night of collision; I was on the topgallant forecastle. I was there from 2 to 5 o'clock. Was stationed on deck generally. Deveux and Le Galle were with me. Saw the "Sapphire's" light at 2 o'clock; can't say how far off. Between 4 and 5 I saw her with the wind astern and heading the current, coming towards the "Euryale." This was about 4½ o'clock; about 5 minutes before collision. I mean that she began to come towards the "Euryale." I heard them paying out chain on board the "Sapphire." I heard them doing this and also dropping a 2nd anchor at about 4 o'clock. I heard this myself. I then saw the "Sapphire" coming down on us with wind astern and heading current. I remarked nothing; she did not continue to approach us. I did not apprehend a collision until about 10 minutes before it occurred. Between the squalls the ship could be seen,
41 but during the squalls could only see the light. The wind was very high; weather squally.

When collision occurred I was on port quarter; was alone. When we tried to hoist jib we could not do so; we were then ordered to take it down.

Cross-examined.

Commenced hoisting jib after collision 2 or 3 seconds. Mr. Le Moir ordered it hoisted as soon as he came on deck. I was in division of Deveraux. Our duty, to look around generally, to watch; one was to observe, the others to observe the lights, and do what was necessary. About 2 o'clock she was about 2 points on our port bow. Don't know how the tide was. We headed to the wind. At 3 she was nearly dead ahead of us. The flood had commenced. The "Euryale" still headed to the wind. The "Sapphire" was heading a little more to the eastward; her port side toward us; her stern had swung to the flood a little. At 4 o'clock she was on our starboard side, heading bows on to our main rigging. At 4½ she was heading tide, with stern to the wind, heading towards main-rigging, can't say how far off. Between 4½ and 5 she con-

tinued to approach us gradually; not at all times; when she came in she came all at once. We did not strike the bell at 5 because the ship was coming on to us. Don't know whether it was struck at 4
42 o'clock. The collision occurred about 5 minutes before the brandfat. I reported to Mr. Le Noir that the vessel was gradually nearing us; made this report between 4 and 5. I had charge of the watch between 4 and 5. Did not look at the clock very often. Was looking at the "Sapphire." The Euryale did not change her position at all during the night; she headed to the wind always.

The 2nd anchor had no effect to stop "Sapphire" dragging. She was coming nearer, but we did not think she would come into us. After 2nd anchor was dropped did not come so fast.

Captain PARAYON:

When we have no more than 3 officers, each is on duty for 24 hours; what we call a "guard." When we have more than 3 officers, the officers have a watch of 4 hours each. The division consists of $\frac{1}{4}$th of the crew. There is no particular station for the look-out on a small ship like mine. I generally keep them over my cabin, as it is higher and they can keep a better look-out.

The chief de division is also charged to look out, and to keep the others on the alert. His duty is to report to officers of watch if anything occurs. From the Euryale's rails to water is 13 feet, measured amidships.

My cabin roof is 2 or 3 feet higher.

43 McAllister reads deposition. Claimant's witnesses.

CHARLES GOODALL:

Have been harbor-master 3 years and $\frac{1}{2}$. Pretty well acquainted with tides and currents. If wind were southeast and tide ebb, the "Sapphire" would drift right astern of vessels in position. Showed by diagram she would come very near "Euryale," but go outside. If tide is flood and wind southeast, vessels sheer about a good deal. Have not very often seen a light vessel remain stationary; generally sheer about more or less. Light vessel more liable to sheer than deep vessel. Shouldent think a light vessel would remain still with tide an hour old. It then begins to run pretty strong.

Cross-examined.

With a flood-tide, placed as these vessels, the "Sapphire" might touch the "Euryale," especially if water high in upper rivers; this would deflect this tide towards the wharfs. I don't know of any way in which the "Euryale" could have dragged her anchor and collided with "Sapphire," of latter remained at her anchorage without dragging. 250 yards is usually considered a good berth. It would be better to let go a second anchor rather than to pay out more chain. December is a bad month.

E. MACNEAR:

Am a seaman. Have been pilot here for one year. Am now a
44 ship-broker. The heaviest ship would lie the most steady if wind from S. E. and tide flood. I think it impossible that a vessel could have remained all night in a S. E. gale heading to the same point of the

compass. If vessels, situated as in this diagram, on a flood-tide and with S. E. gale, the bark would have been acted more than an hour before the other, because she is further in shore. I take her to be 50 yards nearer, and being light, would just feel the tide which begins to run on the surface. The vessels would veer about promiscously. The fact that one chain was underneath ours shows that we could not have dragged over her chain.

WILLIAM F. PECK:

Ship-master for 7 years. Commanded the "Shooting Star." The "Sapphire" could not have dragged her anchor over the Euryale's chains.

Captain MAYO:

Am a pilot; for 8 years. I should consider 250 yards, a cable's length, a safe anchorage. The vessels would tail with ebb-tide, as represented in diagram. The Sapphire would tail in shore with the ebb-tide. Do not agree with Goodall and McNear that she would drag to eastward. She would drag to S. and eastward with flood-tide. Don't think
45 she would drag against tide. The gale of December 22 was of unsual violence. In that gale she would have dragged off shore. Can't say whether she would drag at all in that gale with flood-tide.

AMOS NOYES:

I don't think, on a flood-tide, the S. E. gale could have drifted the "Sapphire" down against the tide, unless the vessels were moored too close together. No collision could have occurred. In truth, both vessels should have put down another anchor. The old harbor regulations required this. No vessel permitted to lie to a single anchor more than 24 hours.

L. S. BATCHELLOR:

Neither vessels would drift on a flood-tide; both would fly around considerably.

E. R. WARSAW:

Master mariner. Commanded the Ocean Express. Have been through the Golden Gate 13 times. If vessels in position shown on the diagram, the "Sapphire" would have dragged to the southward, either to the south by W. or S. by E.

Libellants recall—

Captain PARAYON:

My opinion is that the wind that night had twice the force of the tide. A ship like mine, being very high out of water, sheers very
46 fast, it is true; but it is very difficult for her in a gale to sheer much to one side or the other, as her house on deck is very high and I have two boats on the quarter-deck. I remarked, after collision, that she did not sheer more than one or two points on one side or the other during the gale. The gale lasted four days.

In my opinion, the "Saphire" went across the tide and wind when the flood became strong, and dragged her anchor. As she dragged she went round a little, heading to the tide, as she had nothing to keep her against the wind. As the wind and tide were in opposite directions, and the wind twice the stronger, she must have dragged down on us, and would have

cleared us if her anchor had not taken our chain; this brought her up, and brought her starboard bow on my starboard quarters. Both vessels swung round, and she fell alongside of me, so that we came round to windward of her. We remained in this position until tug took us.

Deposition of George Sprague, claim'ts' witness.

District court of the United States for the district of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III, Emperor of the French.
vs.
THE SHIP SAPHIRE.

47 Be it remembered that on this 27th day of December, A. D 1867, at my office in the United States court building, in the city of San Francisco, personally appeared before me, A. D. Smith, a commissioner to take acknowledgment of bail, affidavits, etc., duly appointed by the circuit court of the United States for the district of California, George Sprage, a witness on the behalf of the claimant in the above-entitled suit.

Geo. F. Sharp, esqr., appeared as proctor for the libellant, and Cutler McAllister, esq., as proctor for the claimants.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by Cutler McAllister, esqr.

Question. What is your name, age, occupation and place of residence?

Answer. My name is George Sprage; my age is 41 years and upwards; my occupation is seaman; and my place of residence, New Bedford, Mass.

Question. How long have you been to sea?

Answer. I have followed the sea for 16 years in the capacity of
48 2d and 3rd mate. I am now on board the ship "Sapphire," in capacity of 2nd officer; have been on board her 9 days. The "Sapphire hauled out into the stream on Wednesday, the 18th of December, 1867. Captain Boyd and a pilot had charge of her when she was hauled out into the stream. She was anchored right off Pacific street wharf, from 200 to 300 yards from the wharf. We put down the port anchor with 50 fathoms of chain. I was aboard when we anchored. The French bark was not anchored there when we went out. I did not notice her at that time. I noticed her the next day, Thursday, Dec'r 19. Her position was a little in shore on the ebb-tide.

G. E. W., cl'k., by A. D. G, D.C.

Question. Was she astern of you?

(Objected to as leading by Mr. Sharp.)

Answer. She was astern of us; she might have been 100 or 150 yards from us. Don't know the weight of our anchor. On Saturday night, December 21st, the wind was from the southeast. I came on deck at 12 o'clock p. m. The wind at that time was S. E.; it was blowing pretty fresh. At that time we were heading to the S. E., to the wind. The tide was running out. We were off Pacific street wharf at that time.
49 'Twas not so dark but that I could see the wharf. The wind continued blowing fresh up to 4 o'clock that morning—still from the

S. to S. E. I veered about from S. to S. E. during that time. I did not leave the deck until after the collision. We had 3 officers aboard, besides the captain, and 16 of the crew at that time; that is her complement. She had a full crew. The captain came on deck at 12 o'clock that midnight; he remained on deck about an hour; he then went below for a while; came on deck again at 4 o'clock a. m. The first mate was on deck from 12 to 4 o'clock a. m. The third officer was also on deck during that time. We called the captain up for him to see the weather. The wind would come fresher in squalls. At 4 o'clock the vessel was heading to the wind, to the S. E. It was about slack-water at that time. At that time the Pacific street bore on our starboard quarter. She, the vessel, was in the same position that she was at 12 o'clock.

Question. How was the position of the vessel, as to the anchors holding, at 4 o'clock?

(Objection to as leading by Mr. Sharp.)

Answer. She was heading about the same as she had been; there was no necessity for giving her more chain; she was lying still and
50 comfortable with what chain she had, and had not moved from her position. I could tell she hadn't changed her position. I could tell she had not changed her position, because she had the bearings. Nothing was done after the captain came on deck; there was no occasion for it. The 2nd anchor was already to let go at any moment in case we wanted to let it go. All the men were on deck from 12 to 4 o'cl'k. The vessel changed her position as to heading about 5 o'clock; she then swung with the tide, which was then running up; she then swung heading to the N. W., towards North Point dock. Her chain then was laying slack, because the wind was blowing from the S. E., and shered her up against the tide. That was the position she laid in when the other ship struck her at about half past 5. The ship was loaded with grain. She was full. She was ready to go to sea. I noticed the French ship all my watch; she was lying a little on our quarter. When the tide commenced to flood she sheered in shore. It was light enough for me to see her that night. She next sheered off shore, and then
51 into us. When she shered off shore, she headed a little towards our starboard quarter.

Question. Could you have any idea, from what you saw, as to the amount of chain she had out?

(Objected to by Mr. Sharp as leading and incompetent; asking for the opinion of the witness.)

Answer. I should judge she had out 80 fathoms. The French ship came stern on to us. At the time she struck we were heading to the N. W.; we were laying in the same position that we were at 12 o'clock, heading differently. At the time she struck us our chain was slack. I was at the wheel at that time. The 3rd mate was on the topgallant forecastle; the men were all aranged around the deck; we were all on the look-out. We had our light in the fore-rigging. The light was a signal-lantern; a bright light; the usual light we put up on board the vessel. She struck us on our starboard bow abreast the forechains; her stern struck us. The first damage was, her spanker-gaff was carried away. She then swung alongside of us on the starboard; her
52 starboard side against our starboard side. At that time we were heading about the same, the same position. She was heading to the east; laying alongside of us. The spanker-gaff was all that was carried off when she was on our bow. She laid alongside of us two hours, during that time the position of the ships were not changed. We were still heading to the N. W. during this time. While

she was alongside of us she was grinding on us and we on her. We were higher out of water than she was. After she swung alongside of us she loosed her jib and hoisted it, which pressed her more heavily on us. She was to leeward of us. The mate sung out several times for them to haul her jib down.

Question. How did the jib, being up, press her on you, she being to the leeward?

Answer. The ships were swinging about at the time, so that at times the wind would catch her jib.

Question. Did the vessel swing so at any time so as to put her at windward of you?

Answer. I don't recollect; I was so busy at the time. While
53 she was alongside we first broke her maintopsail yard. During this time she was grinding on us, which done us a good deal of injury; she carried away our fore and main channels, and injured our hull by her rubbing and gouging. The two vessels were separated by the tug. Everything was done by us to get them clear; by cutting away the rigging, and one thing and another, to clear the ship. We set our mizzentopsail, and tried to back our ship off; kept it up, I should judge, two hours. She kept up point of her jib all the time; she had only hauled it a part of the way down. Nothing was done on board of her by crew or officers, that I could see, to try to get clear of us. The two captains went ashore in her boat (the French boat) to get the tug.

Cross-examined by Geo. F. Sharp, esqr.

Cannot give the weight of the anchor; it was a heavy anchor; wood stock; old style of anchor.

The bottom was muddy; good holding ground. The water was about 7 fathoms deep.

I did not notice the French vessel until the next day after we
54 anchored. She laid nearly astern of us; about 100 or 150 yards from us. I noticed her Saturday, before dark, (Dec. 21st,) her position then was the position described.

I did not know at that time that our vessel had cleared.

I went on board Wednesday; she was then lying at Howard street wharf.

The tug took her out Wednesday night, about sunset, to an anchor. We had a pilot.

I cannot give the name of the vessel nearest to us. The nearest vessel was about 800 yards.

Don't know the name; can't say what her rig was, whether ship, bark, or brig, on her tonnage. She was lying on her port quarter.

The pilot put us in the place where we anchored. Do not know his name.

We did not go out to sea because we were not ready.

I saw the chain let out; we were laying at 50 fathoms chain. It was at no time lengthened. We let go our 2nd anchor just before she struck us. We did that after the flood began to make up, in case the other anchor should drag, which it did not. This was half an hour before the collision, that we let the 2nd anchor.

The "Sapphire" was heading N. W., at that time when we let
55 go the 2nd anchor, on the change of the tide. At the time the [the] French ship sheered in shore if she had let go her 2nd anchor it would have saved all trouble.

(The last part of the question objected to as not called out by any question.)

The 2nd anchor was the same style, and about the same weight, as the anchor first let go. The port anchor might have been 200 or 300 pounds heavier.

Let go 20 fath's chain on 2nd anchor. We took up our starboard anchor after the collision. We have not yet lifted the other anchor.

A bight of the Frenchman's chain was over the bitt of the anchor we raised. Could not tell there was anything on the top of our chain until we got the chain to the top of the water. The chains were not foul. We took up the anchor we dropped last and the Frenchman chain was on that.

All the watch were on deck from 12 to 4 o'clock to stand by in case they were needed.

I saw the French ship coming on us about 10 minutes before she struck. She came upon us very rapidly. She was turning with the tide. She swung first. The tide running up.

It makes no difference in a vessel swinging whether she is loaded or in ballast. She swung 7 or 8 minutes before we did. I was cer-
56 tain about that.

She struck us down about 15 minutes after she swung, as near as I can recollect. I will say that it was longer than 5 minutes.

The stern of the French vessel struck on our starboard-bow. She struck pretty heavy; it was a violent shock. She the swung her starboard side to our starboard side, and she remained in that position until she was towed off. The tug took a hawser from her stern. She had shipped her starboard chain about 20 minutes before the tug came, and she only had one anchor down, the other anchor was hanging to her cathead. A small anchor. Cannot say whether it was the same style as our anchor.

Almost as soon as she struck, they hoisted the jib of the French vessel. Can't say at whose request her jib was hoisted. I heard no order or request given from our vessel. I remained at the wheel until she struck; I did not remain at the wheel after that. 6 or 8 minutes after the French vessel hoisted her jib, we hoisted our mizzen-topsail. Hoisting our mizzen-topsail had no effect upon our position.

The crew of the French vessel made no effort to try and clear from us; the efforts were all made on our part. We remain now in the
57 same position that we were before the collision, bearing the same, no change. I am certain about that. We are now abreast of Pacific street wharf. We now lie, as near as I can judge, about 200 yards right abreast of Pacific street wharf; the same bearings that I have referred to.

Direct examination resumed.

From 4 o'clock to the time of the collision, I was at the wheel.

GEORGE SPRAGUE.

Subscribed and sworn to before me this 27th day of December, 1867.

A. D. SMITH, *U. S. Com'r.*

Deposition of Acaston.

District court of the United States for the district of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III, Emperor of the French,
vs.
THE SHIP SAPPHIRE, &c., &c.

Be it remembered that on this 27th day of December, A. D. 1867, at

my office in the United States court building, in the city of San Francisco, personally appeared before me, A. D. Smith, a commis-
58 sioner to take acknowledgement of bail and affidavits, etc., duly appointed by the circuit court of the United States for the district of California, William H. Aeston, a witness on the behalf of the claimants in the above-entitled suit.

George F. Sharp, esqr., appeared as proctor for the libellant, and Cutler McAllister, esq're, as proctor for the claimants.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon and say as follows, that is to say:

Examination-in-chief by Cutler McAllister, esqr.

Question. What is your name, age, occupation, and place of residence?

Answer. My name is William H. Aeaston; my age is 40 years and upwards; my occupation is seaman; and my place of residence, Boston, Mass. I have been to sea going on 23 years, as seaman and officer. I am 3d mate of the "Sapphire." I joined her on the 19th of December, 1867. She was then lying off Pacific st. wharf, as near as I can judge. I don't exactly know the name of the streets. She is now about 100 yards to the northward and westward of where she was when I
59 went aboard of her. On Saturday night, December 21st, I came on deck at 12 o'clock midnight. At that time it was blowing a six-knot breeze; the wind was increasing. The mate, capt., and 2d mate, and myself were on deck; the crew was on deck aft. All hands were on deck. All hands staied on deck until after the collision. Can't tell how long the capt. was on deck. When he went below I was forward looking out before the vessel, to see which way the anchor was tending. No one but myself and the crew were forward. I was on the topgallant forcastle. We had 3 officers besides the capt., and all the crew moving about on deck, looking out to see if she dragged any. The wind kept increasing up to the time of the collision. When I first went on deck, the tide was on the ebb. The tide commenced to flood at ½ past 3. It was slack-water at ½ past 3, as near as I could judge. The vessel was heading to the southeast during the ebb-tide. When the tide commenced to slack, there was a change in the heading of the vessel; she commenced to swing, so that her stern pointed towards the town, and her head
60 northeast. The wind was so strong from the southward that it kept us in that position until about a quarter past 5. At 5 o'clock I was aft with the capt'n and the 2d mate, at the wheel. She did not change. At the time of the collision her head was towards t' northeast. At the time of the collision the tide was running strong, and the anchor was tending off her port bow; the wind was so strong that it kept our stern down to the towen, towards North Point. The French ship at 5 o'clock took a sheer in towards town. She was laying to the northward and westward of us. She sheered in, I dare say, all of 600 yards, untill her light went out. Can't tell how much chain she had out.

Question. How much chain must she have had out to have sheered that distance?

(Objected to by Mr. Sharp as leading and uncompeted.)

Answer. As near as I can judge, from the scope I had of the chain, she must have had out 75 or 80 fathoms.

Question. With 75 or 80 fathoms of chain out, according
61 to your expiriences, could a vessel sheer six hundred yards?

(Objected to by Mr. Sharp as cross-examination, as leading, and incompeted.)

Answer. By dragging she could.

Question. From what you saw of the French ship, did she, while sheering, drag; and, if so, in what direction?

(Objected by Mr. Sharp as leading, and asking only for the opinion of the witness and not for facts.)

Answer. From the best of my opinion she did drag, and dragged southwest. During the dragging I was aft near our wheel-house. We have a covering over our wheel. I went forward right away to see that we were not dragging ourselves. I had a range by lights on shore, and I saw that we were not dragging. We had our port anchor down at that time, with 50 fathoms chain out; there was 50 fathoms chain to the water's edge. Our starboard anchor was hanging to the cat-head. It would not have taken us two seconds to have let go. We did not let go at any time until after she got afoul of us. When she
62 struck us, she [she] struck us on our starboard side just forward of the fore-rigging, just forward of the fore-chains. Her gaff got foul of our forebrace pennant, and her junking into the sea carried away her spanker-gaff. When she struck our bow, she carried away our ring-stopper; that was the reason that our anchor was let go. The ring-stopper held the anchor to the cat-head.

Question. Then the anchor was let go by the collision, not by the order of the master?

(Objected to by Mr. Sharp as leading and incompetent.)

Answer. Yes. The French ship sheered in for town, and then she came up, head to tide, and remained there 10 minutes, as near as I could judge. Could not tell the exact time when she took another sheer off towards the northward, and stopped then for some 10 or 15 minutes, as near as I could judge; when our stern lay right on for town, and she backed right down, stern into us, from the northward, backing down southwest. We were heading then about off northeast. Her stern was tending S. S. W. towards town. The French ship was then to the northward of us.

63 (A map of San Francisco, issued by the S. F. News Letter, was here shown witness.)

After the French ship sheered in for North Point, she was northwest of us; then she made a sheer off town, over towards Goat Island, and during the time that she sheered off, our stern swung around to the northeast, when she came down right stern on to us, and struck us on the starboard side, just forward of the fore-chains; her starboard quarter struck our starboard bow, then she swung alongside.

(Here counsel for claimant asked the commissioner to note the fact that witness stated, on page 21, after the map was shown him, that the French ship made the sheer down over towards Albatross Island, pointing to Goat Island.)

We commenced getting up fenders to keep the vessels from chafing too much. The Frenchman was lying to windward. She loosed a jib. I couldent tell whether it was her jib or outer jib. She had it half-way up when our 1st officer sung out to them to haul it down, and then there was not one of them that stirred to touch it. When she first came in collision with us, just before she struck us, I called out to them a
64 dozen times to pay out more chain, and let go her 2nd anchor. Our 2nd mate was at the wheel at that time. She laid alongside us two hours, as near as I can judge. Her jib-boom was just even with our mizzen-rigging, then she surged ahead again, and carried away

her jib-boom and martingale; then she surged astern again until she got on our bow; when she came abreast of our bow her bowsprit got over our bow and carried her bowsprit away, and turned it right over on her own bow. She surged further astern and got in under our bow. Then the tug came out which our captain went after, for there was not an officer nor a man aboard the French vessel that would offer to fire a gun or go after a tug, until our captain jumped aboard their vessel and got into her boat. They got a hawser out off her quarters on to the tug; think it was the St. Thomas. When the two vessels came into collision, our head was heading in town when she first struck us; then we swung away round with her alongside of us, with her head to the northeast, as near as I could judge. This brought her on our windward side. It was not the wind but the tide
65 that brought her down on us. As near as I judge, when she struck us it was quarter past 5. Then she came down her stern on to us. I reported it to the captain right away as soon as I saw her coming down on to us, and the captain sung out to give our ship more chain. I went to work and gave her more chain, but still it was no use; before we could get out of the Frenchman's reach she was right down on us.

Question. What took place while the two vessels were together, if anything, in regard to their dragging?

Answer. I saw that we were dragging, by the ranges I had on shore. I went to the mate, (this was while the vessels were together,) and told him we were dragging down on to the "Cleopatra." He said he could do nothing more only to get her, the French ship, clear. We were in that position two hours, as near as I could judge. We had a regular signal-light in our starboard rigging. Was on the top foregallant forecastle, and the captain and 2nd mate and watchman was aft, and the crew was all around deck on the look-out.

No cross-examination.

66 W. H. AEASTON.

Subscribed and sworn to before me this 27th day of December, A. D. 1867.

A. D. SMITH, *U. S. Com'r.*

Hearing continued until Saturday, Dec'r 28, 1867, at 10.30 a. m.

Deposition of Patterson.

District court of the United States for the district [court] of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III, Emperor of the French,
vs.
THE SHIP SAPPHIRE, HER TACKLE, &c., &c.

Be it remembered that on this 28th day of Dec'r, A. D. 1867, at my office, in the United States court building in the city of San Francisco, personally appeared before me, Andrew D. Smith, a commissioner to take acknowledgment of bail and affidavits, etc., duly appointed by the circuit court of the United States for the district of California, Calvin M. Patterson, a witness on the behalf of the claimants in the above-entitled suit, pursuant to the adjournment of the hearing of the testimony herein made on the 27th December, 1867.

Geo. F. Sharp, esqr., appeared as counsel for the libellant, and
67 Cutler McAllister, esqr., as counsel for claimants.

And the said witness having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by C. McAllister, esq're.

Question. What is your name, age, occupation, and place of residence?

Answer. My name is Calvin M. Patterson; my age is 40 years and upwards; my occupation is shipmaster and mate; and my place of residence, New York City. I have been to sea 27 years. I am now chief officer of the ship "Cleopatra." On the night of Saturday, December 21st, 1867, the "Cleopatra" was at anchor off Vallejo street wharf. I was on deck all night on board the ship "Cleopatra." During the night I saw the French ship "Euryale" and the "Sapphire;" I saw them in collision. Just before the collision, the French ship set her jib; she cut and sheered about considerable, a great deal. After they run in collision, both ships drifted over towards the "Cleopatra." I am positive of that.

The "Sapphire" at the time of the collision was heading towards
68 the eastern, and the Frenchman was heading towards the westward. On Saturday afternoon, before the blow, the Frenchman was a very little nearest to the "Cleopatra." At that time the "Sapphire" was a little outside to the eastward of the French vessel. The "Sapphire" was in a range with us. The Frenchman was in shore on our starboard bow on ebb-tide. The Cleopatra had only one, the port anchor, down that night. We were loaded that night with a full cargo, 1,500 tons coal and some oak timber.

Cross-examination by Mr. Sharp.

The "Cleopatra" anchored there on the night of Saturday, the 14th Dec'r. The next vessel to us at that time, I cannot tell the name of. The "Intreped" laid to the northward and eastward of us, about north by east; about 1,000 yards distant.

There were several vessels laid astern of us on the ebb-tide to the northward of us; I cannot tell their names. This was when we anchored. I think there was one ship in shore, but not nearer than the "Intreped." I think the Intreped was the nearest ship to us. I think we had been
there 2 or 3 days before the "Euryale" was anchored there. She
69 came there in tow of a tug and anchored. She came on the ebb-tide and anchored about one point on the "Cleopatra" starboard bow. The "Cleopatra" swung stern to the northward. The "Euryale" swung stern to the northward also. I had on the "Cleopatra" the carpenter, myself, 3d mate, cook, one man, the captain, and his wife, on board on the night of Saturday, Dec'r 21st, 1867.

I was on deck from half past six, Saturday night, until long after the collision, and until 10 o'clock, Sunday morning. Capt'n M. O. Daley came on deck about 20 minutes past 5 o'clock, Sunday morning. The two ships collided just before the captain came on deck.

Just after they went together, I went to call the captain. They had been together perhaps two minutes. My object in calling the capt. was to provide against accident that might ensue from the collision of the "Sapphire" and "Euryale," so that we might let go the 2nd anchor, if required. I stood watch till 8 o'clock that night; (Sat. night.) Then the

carpenter came on deck at 8 o'clock; his name is Lawrence Murphy. He stood anchor watch until 12 o'clock that night; then he was relieved by Mr. Reed, the 3rd mate, who stood until 4 o'clock, Sunday morning, and then retired below, leaving me on the "Cleopatra" deck
70 alone. I was on the poop after Reed went below. Most of the night I was on the poop, watching these ships at the same time.

The collision occurred a little over an hour after Reed went below. I noticed my watch and saw that it was five o'clock, just a few, say 3 or 4, minutes before the collision, and therefore I fix the collision to have occurred a few minutes after 5 o'clock. I noticed the "Sapphire" when she first came to an anchorage, don't remember the day. I am confident she came in tow of a tug. I saw her when she dropped her anchor. I think the tide was about still. Can't say the time of day.

I knew the "Sapphire;" was aboard her in New York; not in this harbor. I know her present captain Boyd. I have not seen him for many years until I saw him here since the collision. Captain Boyd and myself were schoolmates in Maine; that was 25 years ago. I have not seen him since until now.

DIAGRAM "A."

Pacific Street Wharf.
Broadway Wharf.
Vallejo Street Wharf.
W
S
N
E
Bonita.
Sapphire.
45 fathoms chain out.

71 (Diagram "A," showing position of the vessels just before the collision, and the time the tide was turning ebb, made by commissioners at request of witness and under his direction.)

Witness says: I cannot tell the amount of chain out or how they tended on the "Euryale" and the "Sapphire." Euryale swung as it was dark.

Question. Can you tell how the Sapphire swung?

Answer. She swung to the northward and eastward.

Question. How is that you can tell how the "Sapphire" swung when you cannot tell how the "Euryale" swung, she being the nearest to the "Cleopatra?"

(Objected to by Mr. McAllister as assuming that the "Euryale" was nearer to the "Cleopatra" than the "Sapphire.")

Answer. Because I could see by the light in the Sapphire binnacle that her stern was towards us, to the northward and eastward.

Question. Which of the two swung first?

Answer. I cannot say now. I don't remember.

72 Question. Did you see them both swing?

Answer. I saw them both after they had swung.

Question. Did they both swing together?

Answer. I do not know whether they both swung at the same moment or not. I don't remember.

Question. If you noticed any difference between the time of their swinging, please give us the particulars of their swinging.

Answer. I could not say the time that the Frenchman swung. As near as I could judge, I think they swung both about the same time.

Question. Which way was the wind blowing at the time of the collision?

Answer. About southeast.

Question. Was it violent?

Answer. Yes, sir; a very strong gale.

Question. Had you noticed any difference in reference to the blowing of the wind from 12 o'clock to the time of the collision? If so, state particularly.

Answer. I don't think there was any change in the wind more
73 than that it was squally all the time, blowing with about the same force between the squalls and upon the same quarters. It blew just about the same at 5 o'clock Sunday that it did at 12 o'clock [Sunday that it did at 12 o'clock,] 5 hours before.

Question. Did you notice the anchor and chain of the Sapphire?

Answer. No; could not see it. It was dark.

Question. Have you ever noticed her anchor to see how it was made, its weight, &c.?

Answer. No, sir; have never noticed it.

Question. Had you noticed any change in the position of the "Sapphire" and "Euryale" from 12 o'clock up to just about the time of the collision?

Answer. I could see the Frenchman sheering about with the tide.

Question. What do you mean by the Frenchman sheering about with the tide?

Answer. Well, across the tide, back and forward. The French ship being lighter than the "Sapphire," the wind had more effect on her than the tide did, and caused her to shove about. The "Sapphire" being loaded drew more water, and hence was more stationary.

74 Question. If you noticed the relative position of the two ships at the time you went on deck at 6 o'clock down to the time of the

collision, and any change occurred by either vessel dragging their anchors, please state it fully and particularly.

Answer. I think that both ships had dragged their anchors, because both were nearer to us than they were when they anchored. I cannot tell how much they dragged.

Question. If you mean to be understood that the Euryale dragged her anchors on Saturday night and on Sunday morning down to the time of collision, state what distance and what direction she had dragged. I want you to answer this question fully, if you have any knowledge on the subject.

Answer. I could not tell in what direction, or whether she was dragging, or whether they was giving more chain.

Question. How much nearer, if any, at the time of the collision, was she to the "Cleopatra?"

75 Answer. I cannot say how much nearer she was, if any. We were giving our ship more chain at the same time.

Question. State when you gave your ship more chain, and how much, and what effect it had in regard to the distance from the "Euryale."

Answer. I did not know at the time when we gave the "Cleopatra" more chain. It was between 12 o'clock Saturday night and 6 o'clock Sunday morning. We gave her between 8 and 10 fathoms of chain. I think ten fathoms. It increased the distance between the "Euryale" and the "Cleopatra."

Question. Cannot you now tell about the time you lengthened the chain?

Answer. No, sir.

Question. Was it before or after the collision?

Answer. 'Twas before.

Question. Who assisted you, if anybody?

Answer. All hands, captain and all, were on deck when we gave her the chain.

Question. You stated in the former part of your examination that you went to call the captain when you saw the 2 vessels together; was the chain lengthened before or after?

Answer. After I called the captain the chain was lengthened, and soon afterward we let go the starboard anchor with 30 fathoms of

76 chain.

Question. How long was it before the collision that the French ship set her jib?

Answer. I don't know how long it was before the collision.

Question. Did not the position of the "Sapphire" at that time hide the "Euryale" from your view?

Answer. There was a difference in the position of the lights of the two ships several times before the collision. The Euryale had 3 lights and the "Sapphire" one, and in setting the lights the "Euryale" dropped one of her three; this was just about the time the two ships came together.

Question. About how far was the "Euryale" from Pacific street wharf before she turned to the tide?

Answer. I could not tell; it was blowing very hard, and you could not judge the distance well. She was outside the ship-channel, however. The reason I know that it because I have been chief officer on the Panama steamers, and they used to go inside of where the 3 ships laid.

Question. About what distance was the "Sapphire," just before they turned, from the "Euryale?"

Answer. I could not tell the distance, because I did not take pains to notice the distance.

Question. Did you notice either of the vessels dropping the 2nd anchor?

77 Answer. I did not. I did not notice the size of the "Euryale's" anchor, or the "Sapphire," either. The bottom where the "Cleopatra" was anchored was mud and shells; soft bottom. I don't know the bottom where the "Sapphire" and "Euryale" were anchored.

Direct examination resumed.

Question. Look at the diagram "A," page 32 of this testimony, and state what it represents.

Answer. The ships in the diagram are nearer than they appeared to be in the stream; I mean the "Sapphire" and the "Euryale." That represents the position of the "Cleopatra," "Sapphire," and the "Euryale" pretty nearly; not exactly. They are a little nearer together than the ships were; there was more than a ship's length between them.

Question. Does it represent correctly the relative positions without the distance of the three vessels?

Answer. As near as I can judge it is correct.

Question. Were either of the vessels tailing to an ebb-tide, on a line with the "Cleopatra;" and, if so, which one?

Answer. The "Sapphire;" at the same time the "Euryale" was tailing to the eastward.

Question. At what time was the "Euryale" tailing to the eastward?

Answer. At the same time that the "Cleopatra" was tailing to

78 the northward.

Question. With an ebb-tide, in calm weather, were either of the vessels tailing on a line with you; if so, which one?

Answer. It was not calm,

Question. In calm weather, and with an ebb-tide, were either of these vessels tailing on a line with you; and, if so, which one?

(Objected to by Mr. Sharp, as leading, incompetent, and not cross-examination of the matter called out by libellant on cross-examination.)

Answer. But there was no calm weather; but in case there was calm weather, the ship would tail to the tide.

(Counsel for claimant here explained to the witness that he is not asking how the vessels tailed during the storm.

Counsel for libellant objects to consul for claimants giving any direction or instruction to the witness, and that the proceeding is improper & irregular.)

Question. I calm weather, and with an ebb-tide, were either of those vessels tailing in a line with the "Cleopatra;" and, if so, which one?

Answer. Well, but we had no calm weather. Before the blow the "Sapphire" tailed just outside of us on the ebb-tide. The Frenchman would have tailed just in a line with the "Cleopatra."

Question. On page 38, in your cross-examination, you state

79 that you lengthened your chain just before the collision, and on the same page you also stated that you lengthened your chain after you called the captain. Which is correct; did you lengthen your chain before or after the collision?

(Libellant objects to the witness, and insists that he has no right to tell him what he has sworn to on cross-examination, and should ask the question without leading him.)

Answer. We gave the ship 3 times during the night. I do not remember the times we gave it to her.

Question. Did you give her any chain after the vessels were in collision; and, if so, for what purpose?

Answer. We did, in order to sheer ship clear of the other two.

Question. What were the other two vessels doing at the time you gave her the chain?

Answer. They were dragging down towards the "Cleopatra;" the "Sapphire" with her head to the eastward, the "Euryale" headed to the westward. They were then in contact. The "Euryale" with her jib set.

Cross-examination resumed.

Question. If you lengthened the "Cleopatra" chain from the time you went on deck to the time of the collision more than once, please state the different times, and the amount of chain given at each time.

Answer. I did not know the time, and I did not know the [the]
80 amount of chain; but I know that we gave the ship more chain more than once during that time.

C. M. PATTERSON,
Chief Officer Ship "Cleopatra."

Subscribed and sworn to before me this 28th day of Dec'r, 1867.
A. D. SMITH, *U. S. Com'r.*

Deposition of Waterhouse.

District court of the United States for the district of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III, Emperor of the French,
vs.
THE SHIP SAPPHIRE, HER TACKLE.

Be it remembered that on this 28th day of December, A. D. 1867, at my office, in the United States court building in the city of San Francisco, personally before me, A. D. Smith, a commissioner to take acknowledgment of bail and affidavits, etc., duly appointed by the circuit court of the United States for the district of California, Frank K. Waterhouse, a witness on the behalf of the claimant in the above suit.

Geo. F. Sharp, esqr., appeared as consul for the libellant, and C. McAllister, esqr., as counsel for the claimants.

And the said witness, having been by me first cautioned and
81 sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by C. McAllister.

Question. What is your name, age, occupation, and place of residence?

Answer. My name is Frank A. Waterhouse; my age is 37 years and upwards; my occupation is seaman, and officer; and my place of residence, Gardiner, Maine. I have been going to sea over 20 years, as boy, seaman, and officer of ship. Once was master. I am now first officer of the Sapphire. I joined her alongside of the dock here when she began to load. She went out into the stream on Wednesday, Dec. 17, '67, in tow of the steam-tug Goliah.

G. E. W., cl'k, by A. D. G., D. C.

Question. Look at diagram "A," page "32" (page of this transcript) of this testimony, and state whether the position of the vessels there put down are the correct position of the vessels at the time you anchored there.

Answer. I should judge that the "Sapphire" was a little further to the eastward than she appears in the diagram. We anchored from a cable to a cable and a half length from the "Euryale."

Question. Where were you on the night of Saturday, De'r 21, 1867?

Answer. I was on board the "Sapphire;" on deck most of the
82 time. I was out and in every 15 minutes during the night; that is, after 10 o'clock, when it commenced to blow hard. The captain was in and out until after midnight. All the officers and all the crew were supposed to be on deck. We had our port anchor down with 50 fathoms to the water; the starboard anchor at the cat-head already. I did not see any particular danger at all. The captain told me that if she was likely to start to put the second anchor down. 'Twas puffy and squally, and I would occasionally go and feel the chains to see whether she was dragging or not. I did not see as the ship dragged any; could not tell by the anchor or by the lights ashore that she was dragging. The tide turned between 4 and 5 o'clock Sunday morning, about half past four. The "Sapphire" tailed to the ebb, down to the time the tide turned.

Question. When did the ship commence to trail in any other direction?

Answer. About half past 4 she laid across the tide and wind, heading towards town; she dodged and cut about a little; no more than could be expected from that tide and wind, with a strong tide and a strong wind. The tide was then flood. We were watching the French ship all night, but I didn't see any difference between us as we lay.

83 Question. When did you first notice any difference in the position of the "Euryale?" State what the difference was.

Answer. The first that I noticed she was laying on the tide about the same as we were. She started and came in towards the town in the direction of Vallejo st. wharf; then she run in as far as her cable would apparently allow her. Then she backed off stern first and came down on us; her starboard quarter took our starboard bow; that let go our starboard anchor, and she swung alongside of us side by side. We then swung half-way round, head to the island and stern to the docks, which brought her to the windward of us. The jib I did not notice until she was alongside. I then tried to make them haul it down. We set our mizzentopsail and spanker and tried to back the ship off, but didn't succeed. She was then to our windward and we were in collisions.

Question. While in collision did the two vessels change their position any?

Answer. They swung half-way round so that as to head right the reverse.

Question. Did the vessels change position any by drifting?

84 Answer. I think they dragged a little to leeward down the harbor. They were in collision about an hour and a half; somewhere there.

Question. Do you know whether you cut around just before the time of the collision?

Answer. Well, we might have cut around a little; could not expect to lie there in that wind and tide steady; we cut around, of course, some.

Question. From what you saw of the Frenchman's sheering, how much chain should you judge she had?

Answer. She had out a very long scope of chain, or lifted her anchor; she ran in a long distance for a commonly moored ship.

Question. Did she let out any more chain after she came in collision with you?

Answer. Not to my knowledge.

Question. What did she do with the anchor and chain she had down, and did she have more than one down?

Answer. She had but one anchor down; she did not do anything with it that I could see. She had one at the port bow, that I saw. I suppose she had but one down.

85 Question. How did she get the one that she had down up?

Answer. She slipped, unshackled, her chain and has not got it up yet; that was after the collision and after the tug-boat towed her clear of us that she unshackled her chain.

Question. What was the character of the night as to darkness?

Answer. It was very dark, boisterous night, squally, blew very heavily.

Question. How could (you) judge of the position of the "Euryale?"

Answer. By her lights.

Cross-examination.

Question. Did you lengthen your chain any time during Saturday night?

Answer. No, sir.

Question. Did you notice any difference in the respective distances between the "Sapphire" and the "Euryale" prior to the turning of the tide?

Answer. No; I did not.

Question. Which one turned first with the tide?

Answer. I did not see any difference; we both commenced turning about the same time; the wind and tide both being very strong, and the reverse one blowing down, the other running in.

86 Question. About how long were you in the turning?

Answer. We commenced to turn about half past 4; we laid across the tide about an hour before we came in collision.

Question. How long were you engaged in turning?

Answer. After we came in collision there was considerable excitement on board, and should judge it was something inside of an hour before we swung half round.

Question. Is there any difference between a vessel loaded and a vessel in ballast, in reference to turning with the tide?

Answer. Yes; I should judge there would be that night at that time. I should judge a light vessel of the same size would turn slower than one loaded, with the wind blowing down. The wind had more hold, the tide less. The "Sapphire" is 1,305 tons; should judge the "Euryale" was just about half that tonnage.

Question. Take those two vessels in the position that they were in that night, and the wind and tide, which, in your opinion, would turn first with the tide?

Answer. I should not think there would be any great difference. The "Euryale" is a short, deep ship, and the "Sapphire" is nearly twice her length, one-third longer.

Question. Which vessel, in fact, did turn first that night?

87 Answer. We turned together; she run in, backed right down on us, then she slewed round both starboard sides together, then we both took a turn half-way round.

Question. Did they collide whilst swinging with the tide?

Answer. She ranged astern while swinging.

Question. Did they collide whilst swinging with the tide?

Answer. What do you mean by that?

Question. Did the vessels come together while swinging with the tide?

Answer. They were together when they swung around.

Question. Did the two vessels come together while swinging with the tide?

Answer. Just as I stated before, the two vessels were laying across the tide when they came together.

Question. When your vessel turned with the tide, which way did she turn?

Answer. She swung around this way with the current. We laid across the tide until after the collision; we had not swung round until after the collision.

Question. Had the "Sapphire" turned more than half-way round with the tide when she was struck by the French vessel?

Answer. I can't say without a point either way, but she had
88 not turned entirely round, about half-way.

Question. If you dragged after they came together, tell in what direction, and about how much.

Answer. If she dragged she dragged to the northward and westward. I can't say how much. I can't see by the land-marks on shore that she has altered her position.

Question. Did you see the Euryale at any time dragging her anchor?

Answer. I can't say. I couldn't see her anchor.

Question. Do you now say that the present position of the anchor of the "Sapphire" is in the same position as it was before the collision?

Answer. I could not say exactly; she might have dragged a little; she might have not. I can't say that she has.

Question. Is it you present belief that she has changed her position since she was first anchored?

Answer. I think she dragged in the collision to the northward and westward.

Question. If you wish to be understood that she did drag in the collision to the northward and westward, state how far, in your opinion, she did drag.

Answer. Perhaps 50 or 60 fathoms.

89 Question. Do you mean to be understood that she did, in fact, drag, or is it only your opinion?

Answer. I think she did drag in the collision.

Question. Two vessels turning with the tide, coming together at half-tide, half turned, the wind blowing heavily from the "southeast," which way would they drag their anchors?

Answer. A ship might get across the tide, sheering with the tide, and run to windward with the anchor. I have seen the thing done. It is generally supposed that they would drag with the wind; they might get caught in the tide and trip their anchor and cut to the windward.

Question. About what size anchor had you down? Describe it.

Answer. I think about 3,800 or 4,000 pounds, wood stock, old style of anchor, an inch and $\frac{7}{8}$ chain. The other anchor is 300 or 400 pounds heavier, I think.

Question. Was not the starboard anchor let go before they struck?

Answer. No, sir.

Question. Do you mean to be understood that the "Euryale" put up her jib before you came together?

90 Answer. I could not say about that; the first I knew of it was when she was alongside.

Question. Do you consider 50 fathoms sufficient length of chain for the "Sapphire" in the condition that she was in on that night, with the wind blowing as you have stated?

Answer. Until I thought she wanted more, then I should have let out the 2nd anchor and given her more chain or both anchors.

Question. State what distance the two vessels were apart on the evening before the blow, at dark Saturday evening.

Answer. A cable or a cable and a half's length; a cable is 90 fathoms.

Question. Did you consider that at that time a safe position?

Answer. Yes, sir.

Question. Do you mean to be understood when the "Sapphire" took her position and anchored, that she was within a cable or a cable and a half's length of the "Euryale?"

Answer. As near as I could judge.

FRANK K. WATERHOUSE.

Subscribed and sworn before me this 28th day of Dec'r, 1867.

A. D. SMITH, *U. S. Com'r.*

91 *Deposition of Boyd.*

District court of the United States for the district [court] of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III, Emperor of the French,
vs.
THE SHIP SAPPHIRE, &cc.

Be it remembered that on this 30th day of Dec'r, A. D. 1867, at my office in the United States court building in the city of San Francisco, personally appeared before me A. D. Smith, a commissioner, to take acknowledgment of bail and affidavits, etc., duly appointed by the circuit court of the United States for the district of California, Alpheus P. Boyd, a witness on the behalf of the claimants in the above-entitled suit.

Geo. F. Sharp, esqr., appeared as counsel for the libellant, and C. McAllister, esqr., as counsel for the claimants.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the case aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by C. McAllister.

Question. What is your name, age, occupation, and place of residence?

92 Answer. My name is Alpheus P. Boyd; my age is 40 years and upwards; my occupation, shipmaster; and my place of residence, Bath, Maine. I am the master of the ship "Sapphire." I have been to sea 23 years as a sailor, officer, and master. I first joined the "Sapphire" in May, 1867. I was master of her at the time of the collision. She went out into the stream Wednesday, the 18th Dec'r, 1867. About 5 o'clock p. m. we anchored in the stream.

(Witness' attention called to diagram "A" on page 32 of this testimony, page of this transcript.)

Question. Look at the diagram and state whether it represents correctly the relative positions of the "Euryale" and the "Sapphire."

Answer. It is a fair representation, I believe.

Question. State the distance between the "Sapphire" and the "Eu-

ryale" on the afternoon of Saturday, De'r 21st, 1867, before it began to blow.

Answer. I judge there was about 90 fath's—a cable's length.

Question. Was that the distance at which you first anchored from the "Euryale?"

Answer. It was about 90 fathoms.

Question. What time did you leave the deck on Saturday night?

93 Answer. Between 11 and 12 o'clock.

Question. What anchor did you have down, how much chain out, and what were your orders in regard to letting go the second anchor?

(Objected to by Mr. Sharp as to so much of the question as requires an answer as to the orders given in regard to letting go the 2nd anchor, as incompetent, irregular, and not the best evidence.)

Answer. I had down the port anchor, about 50 fathoms chain out; I ordered the mate to keep a good look-out and give me a call if it was necessary. I was very tired that night, and did not want to be called unless it was necessary; had been up the 3 nights previous.

Question. Where was your starboard anchor during that night?

Answer. All ready to let go; range of chain overhauled; could have been let go in a second.

Question. What is the weight of your port anchor, and the size of your chain?

Answer. Between 3,600 and 3,800 lbs. The chain is $1\frac{3}{4}$ or $1\frac{7}{8}$ inches.

Question. When did you next come on deck, that night or Sunday morning?

94 Answer. Between half past three and four o'clock.

Question. How long did you remain on deck at that time?

Answer. I remained all the time until after the collision, except I went below one to change my hat.

Question. What was the character of the weather during that time?

Answer. When I first came up it was blowing very heavy, much stronger than I expected. 'Twas blowing very heavy during all that time.

Question. How was the tide when you came on deck, and how did your vessel tail?

Answer. 'Twas near low-water about. I had no compass on deck and couldn't see exactly how she tailed; she was tailing down stream.

Question. Did she tail to the ebb, or had she commenced to turn with flood?

Answer. She had slackend her chain and had commenced to turn a little with the flood shortly after I came on deck.

Question. How long after you came on deck was it, if at all, that she lay across the tide and wind?

(Objected to as leading and incompetent on direct examination.)

95 Answer. I don't remember the number of minutes, the exact time.

Question. Did you find when you got on deck that she had drifted?

Answer. I could not see that she had. It was very dark when I got on deck.

Question. About how long had she laid across the wind and tide before the collision?

Answer. I think about half an hour. I could not tell the time exactly.

Question. While you were on deck did you see the "Euryale" lights at all, and could you judge of her position?

Answer. I saw them when I first came on deck; they were then on our starboard quarter. After that she shot in shore, so that I did not see her at all, and considered that we were at a perfectly safe distance, but were on the point of letting another anchor go as soon as I got the ship in a position to do it.

Question. When did you next see the "Euryale," and where? State particularly.

96 Answer. After she shot away from us in shore, I stepped down below a moment to get a hat, and when I came up she was coming right to us.

Question. State particularly where she struck you, and what damage was done to either vessel.

Answer. She struck us on our starboard bow, and came right round alongside. I was below when she first struck, but was on deck when she came alongside. I had the second mate at the wheel to sheer the ship, to get her in a position to let go the other anchor. She first struck us on our starboard bow. When I first saw her she was coming right alongside.

Question. What part of her struck your starboard bow? In what position did she swing alongside of you? How were both vessels heading at the time she first swung alongside of you? Did they change their position while in collision? Did they drift while in collision, and how long were they together? What portion of the "Euryale" was damaged before the vessel got separated, and what portion of the "Sapphire?"

(Objected to by Mr. Sharp, 1st, as leading; 2nd, as cross-examination and incompetent, and answered by a former question, which

97 was leading.)

Answer. When I saw the "Euryale" the was coming right alongside. I think her stern struck us first and that she swung around; she swung alongside of us with her starboard side to our starboard side. At the time she first swung alongside of us, our ship was heading a little in shore; she was tending a little in shore. The "Euryale" was heading in an opposite direction from us, while in collision. I could not tell exactly that they changed their position. We set our mizzentopsail to back her aft. I ordered the mizzentopsail and spanker set to back our ship off, and asked them at the same time to run a line from their bow to our starboard bow, and spring her ashore. I think the two ships dragged a little with our topsail and spanker set while they were together. I could not tell exactly how long the two ships were together, because I left for the steam-tug. I cannot tell what portion of the "Euryale" was damaged, because I was on shore and on the tug a part of the time. The "Sapphire" was chafed fore and aft, channels, fore and main, were carried away, rail broken, martingale carried away, and all the chain attached, head partially carried away, bowsprit

98 shrouds broken, body stays broken, and [and] jib guys carried away.

When I got on deck the "Euryale" was nearly alongside. I gave orders immediately to set the mizzentopsail, and to the "Euryale" to haul her jib down. I also ordered our spanker set, also ordered fenders to be put between the 2 ships, which was done. I also asked them to run a line from their bow to ours to spring their vessel astern as we were backing off. I ordered our yards braced up to not interfere with theirs. The French people did nothing on their vessel. I then saw from what we had done, that the vessels were not going to part. I asked them to fire a gun, which they did not do. I asked them to send ashore for a steamboat. Wishing to hurry the matter, I jumped from my ves-

sel to theirs at the risk of my life, and got into her boat. As to the position of the vessels at the time they came together, I cannot state exactly. I could not see; it was dark; my eyesight is bad; coming out from the light I am a little blinded. They pulled on shore and I jumped on the first steam-tug I met, told them there were two vessels together, and asked them to go and pull them apart. I got them there and pulled the Euryale off; she had a line ready and the tug pulled her off. When I went back the ships had changed their position on account of the tide.

99 Question. What was their position then, and how were they heading?

Answer. I think our vessel was heading to the tide nearly; the wind had some effect on her; the "Euryale's" stern was a little off from our vessel and her bow under our bow. The "Euryale" passed a hawser to the steamer, and was pulled off.

Question. From what you saw of the "Euryale" sheering, what should you judge to be the amount of chain she had out?

(Objected to as incompetent, asking for the opinion of the witness and not for facts.)

Answer. 80 to 90 fathoms.

Question. When did your starboard anchor drop?

Answer. I considered her at a perfectly safe distance from us; when she first came against us she broke the lasking to our anchor; broke the ring-stopper, and let the anchor down; the wind was very violent at that time. One thing I wish to state: I took the precaution to take up our anchor, since the collision, to see if it was foul. I find it perfectly clear. The wind was so violent before the "Euryale" struck us, I had a man prepared to let the anchor go a half a minute before.

100 Question. How much did your vessel sheer, if at all?

Answer. I could not tell; our vessel, being loaded very deep, sheered very little, if any.

Question. If you had got your 2nd anchor down in the position you describe, what would have been its effect upon the sheering of your vessel?

(Objected to as asking for the opinion of the witness, and not for facts; as irregular and incompetent.)

Answer. It would have sheered her over towards the island—Goat Island.

Question. Did you anticipate any danger from the sheering of the "Euryale?"

(Objected to as asking for opinion of witness, and not for facts.)

Answer. Not the slightest. I considered her at the time at a safe distance until she came into us.

Question. What object did you anticipate by sheering your vessel with the 2nd anchor toward Goat Island, when the wind became more violent?

(Objected to as incompetent and irregular, and asking for the
101 opinion of this witness, and not for facts.)

Answer. I expected to get the two anchors wide apart to prevent the vessel from sheering.

Cross-examination.

Question. Please give us the name of all your officers you had on board the night of the collision.

Answer. 1st officer, Mr. Waterhouse; 2nd, Sprague; 3rd, Acaston.

Sprague is still with me, and both the others; they have all been examined. In speaking of seeing the "Euryale" in my direct testimony, I saw her hull but once; the other times I saw her lights only; the time I saw her hull was just after I came on deck; she was then just off our starboard quarter. I could not tell the distance; it was very dark. I can't say how far I could see the hull of a ship that night. The mate asked me at that time if I thought we were any nearer that vessel. I replied that I could not tell. I ordered the 2nd anchor let go, and ordered the 2nd mate to the wheel to sheer the vessel, so as to get the vessel in a proper position to let the 2nd anchor down; before the order was fulfilled the "Euryale" was upon us. It was 20 min-
102 utes or half an hour before the collision that I saw the hull of the "Euryale;" then she went off, and I did not see her again until the time of the collision. When I speak of the vessel going off, I mean that the hull disappeared from my sight, and I went below then to change my clothing, which was wet, and to change my hat. When she disappeared from my sight, I supposed that she was sheering about with the tide; we being loaded and off shore did not sheer so quick; she was light. I can't judge the distance she was from us when she was sheering; the fact was, I could not see very plain. It was about 4 o'clock when I saw the vessel sheering. I am not sure of the time, as I did not look at the clock in the cabin. The flood had commenced making. It was after four, if anything. I cannot state the length of time it was before the collision; cannot recollect. The wind was blowing very heavy in squalls from S. W. to S. E.; it was raining very hard. I could not tell whether she was turning with the tide or not at the time she disappeared. The "Euryale," being in shore, turned first with the tide. I judge she turned first. I did not see her. The tide runs up sooner in shore than out. I can't tell the time when my ves-
103 sel commenced turning. She was struck during the time both vessels were turning with the tide. The "Sapphire" had turned a little with the tide, perhaps 3 or 4 points, when she was struck. She was not turned half-way round, not quite one-half way round, when she was struck. I was in the cabin when the vessels struck first. It had been some little time, perhaps 15 minutes before, that I had seen any indications of the "Euryale." It was her light that I saw, but I can't say how far off. It was a changing light, changing about; changed a little with the sheering of the vessel.

Question. Was she not then turning with the tide?

Answer. Yes; she felt the tide in shore before we did; she was sheering about with the wind and tide. That was the time that I saw by her lights that she was sheering in shore. I could not see her hull. Had she then, when she sheered in shore, let go her other anchor, it would have prevented all collision.

Question. How is it that you say that she sheered in shore to such a great extent, and cannot give us any idea of the distance she sheered?

Answer. I could not tell, only seeing her [her] light; I could not
104 tell whether she was sheering 100 or 200 feet. I will not say that she dragged her anchor at all while she sheered. From what I saw of her lights and the sheering I could not tell how much chain she had out.

Question. From what you saw of the "Euryale" sheering and her lights, will you state on your oath that she had out more than 50 fathoms?

Answer. I cannot swear as to the length of her chain, but should judge from her sheering that she had out 80 fathoms.

Question. Do you mean to be understood that anybody standing on the deck of your vessel on the night of the 21st of December, and looking at the lights on the "Euryale," and the changes either by sheering or turning with the tide, could tell whether the "Euryale" had out 50 or 80 fathoms of chain?

Answer. I don't think they could be positive of it; I don't think I could be positive of it.

Question. Could you see her light all the time?

Answer. No, sir; there was once when I could not see it; that
105 was after 4 o'clock, some little time before the collision.

Question. Will you swear that the "Sapphire" did not drag her anchor on the night of the 21st before the collision?

Answer. I cannot swear to it; only thought from the bearing next day that she did not.

Question. Is the anchor in the same position now that it was the next day after the collision?

Answer. It has been moved a little, perhaps 20 feet, in lifting it to see if it was clear.

Question. Were you present when they took up the 2nd anchor?

Answer. I was on board but not forward; don't remember the day it was taken up.

Question. How did the 2nd compare with the 1st as to weight and size?

Answer. The 2nd anchor was about 200 pounds heavier than the 1st. They are both wood stock, old style. Had 2 small anchors weighing about 350 and 750 lbs., should judge, aboard; those are all we had and all we have now.

Question. Can you give the different position the "Sapphire"
106 tailed in from 3 o'clock until the time she was struck?

Answer. She tailed down stream and a little off the land at different times; when the tide made up she tailed a little off the land, just as I stated before.

Question. State particularly the positions of the two vessels when they came together.

Answer. I cannot state it exactly; our vessel was heading a little in for the town; she was turning a little with the tide.

Question. Which way was the "Euryale" turning?

Answer. As I did not see her I could not tell.

Question. Could you not tell the way she was turning from the manner and place when she struck the "Sapphire?"

Answer. She must have been turning the same way we were, of course; she could not have been turning any other way from the manner she struck us.

Question. State if there were any change in the wind as to violence, say from the time that you were on deck that night until the time of the collision.

Answer. The wind veered a little from the southeast to the
107 southwest. I went below at 12 o'clock and slept until 3.30 or 4 o'clock when I came on deck; at 3.30 or 4 o'clock the wind, I think, was between south and southeast; I could not tell, I had no compass.

A. P. BOYD.

Subscribed and sworn to before me.

A. D. SMITH, *U. S. Comm'r.*

UNITED STATES OF AMERICA,
Northern District of California, ss:

Andrew D. Smith, a commissioner duly appointed by the circuit court of the United States for the district of California, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bails in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bails in civil causes depending in the courts of the United States,'" passed March 1st, 1867, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witnesses are material
108 and necessary in the cause in the caption of the said deposition named.

I further certify that a notification of the time and place of taking the said deposition was waived by the proctor for libellants.

I further certify that, on the 27th day of December, in the year of our Lord one thousand eight hundred and sixty-seven, I was attended by Geo. F. Sharp, esqr., counsel for libellant, and C. McAllister, counsel for claimants, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing, in the presence of the witness, and from their statement, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same, with my own hand, to the court for which the same are taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the named in the said caption.

109 In testimony whereof I have set my hand and seal this 30th day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States the "92."

A. D. SMITH,
United States Commissioner, duly appointed by the Circuit Court of the United States for the District of California.

G. E. W., cl'k, By A. D. G., D. C. (Endorsed:) Filed 31st day December, 1867.
G. E. WHITNEY,
A. E. SMITH, *Dep'y.*

Order.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Tuesday, the nineteenth day of May, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Ogden Hoffman, judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
vs
THE SHIP SAPPHIRE, ETC.

110-111 And now, at this day, the court files its written opinion

herein, and it is thereupon ordered that a decree be entered in favor of libellant, in accordance with said opinion.

Order, reference to commissioner.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Tuesday, the eleventh day of August, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Ogden Hoffman, judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
vs.
SHIP "SAPPHIRE."

This cause having been heard on the pleadings and proofs, and due deliberation being had in the premises, it is now ordered, adjudged, and decree that the said libellant recover the amount of his damage sustained by him in consequence of the collision in his said libel
112 described and set fourth; and it is further ordered that the said cause be referred to John O'Wheeler, as a commissioner, to ascertain and compute the amount of the said damage due to said libellant in the premises, and that he report the same to this court with all convenient speed.

Order of reference.

UNITED STATES OF AMERICA,
District of California, ss:

District court of the United States, August, 1868.

At a stated term of the district court of the United States, begun and holden at the city of San Francisco within and for the district of California, on the first Monday of April, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Ogden Hoffman, district judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
libellant,
vs.
THE SHIP SAPPHIRE, ETC.—TRUEFANT ET AL.,
claimants.

113 This cause having been heard on the pleadings and proofs, and due deliberations being had in the premises, it is now ordered, adjudged, and decreed that the said libellant recover the amount of his damages sustained by him in consequence of the collision in his said libel described and set forth; and it is further ordered that the said cause be referred to John O'Wheeler, esq., as a commissioner, to ascertain and compute the amount of the said damages due the said libellant in the premises, & that he report the same to this court with all convenient speed.

OGDEN HOFFMAN, *District Judge.*

Filed Aug. 11th, 1868.

GEO. E. WHITNEY, *Clerk,*
By S. NEAL, *D. C.*

114 *Order amending interlocutory decree.*

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Thursday, the 20th day of August, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Ogden Hoffman, district judge.

THE EMPEROR OF THE FRENCH
vs.
THE SHIP "SAPPHIRE," ETC.

By consent of parties, it is hereby ordered that the interlocutory decree entered in this cause on the 16th of August, 1868, be amended by striking out the name of John O'Wheeler, who declines to act, and inserting instead thereof the name of Geo. E. Whitney as com-
115 missioner to ascertain the damage, &c.

OGDEN HOFFMAN, *District Judge.*

Filed & ent. Aug. 20, 1868.

GEO. E. WHITNEY, *Clerk,*
By S. NEAL, *D. C.*

Order.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Monday, the fourth day of January, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, the Honorable Ogden Hoffman, judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
vs.
THE SHIP "SAPPHIRE," &c.

On motion of Milton Andres, esquire, proctor for libellant, ordered that the report of the commissioner, to whom the case was referred to assess damages, be filed and published.

Report of commissioner.

In the district court of the United States in and for the district of California.

116 NAPOLEON III, EMPEROR OF THE FRENCH,
vs.
THE SHIP SAPPHIRE, HER TACKLE, &c.

In pursuance of a decretal order made in the above-entitled cause, on the 16th day of August, 1868, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount of the damage due libellant by reason of the collision in his said libel described and set forth, and to report to this court thereon with all convenient speed, I, George E. Whitney, to whom the matter was referred, do report that I have been attended by the proctor of the respective parties, and have taken and examined all the testimony offered in support of libellant's claim, which is hereto annexed and returned into court with this report, as a part thereof, and that no testimony was offered by the proctor for claimants.

Upon the testimony taken before me as aforesaid, I report that there is due to the libellant, as damages sustained by him by reason of said collision, the sum of sixteen thousand four hundred and seventy-four dollars.

117 Dated at San Francisco, this 12th day of December, A. D. 1868.

Respectfully submitted,

GEO. E. WHITNEY,
Com'n'r of the U. S. Courts, Dist. of California.

In the district court of the United States, district of California.

NAPOLEON, III, &c., }
vs.
SHIP SAPPHIRE, &c. }

Be it remembered that on this 10th day of October, A. D. 1868, before me, the undersigned, a commissioner of the U. S. circuit court for said district of California, to whom was referred the matter of assessing the damages in the above-entitled case, came Melville Simmons, a witness on behalf of the libellant, who, by me being first sworn to testify to the whole truth, testified as below.

Milton Andros, esqr., appeared as proctor for libellants, and Cutler McAllister appeared as proctor for claimants.

Examination-in-chief by proctor for libellants.

Question. What is your name, age, place of residence, and occupation?

Answer. My name is Milville Simmons; my age is sixty years
118 and upwards; my place of residence is Mare Island navy yard; and my occupation is naval constructor. Knew the French naval vessel, the "Euryale." In the month of September, 1867, she came first to this yard for repairs. She came a second time to the yard for repairs some time about Christmas-time. She was then in a damaged condition. The damages were repaired at this yard, under my supervision.

On her second visit the repairs done on her were made in accordance with a survey made by Captain Waterman and myself. There were other repairs made not called for by the survey, but those other repairs were made necessary by her damaged condition. In removing timbers that were damaged it was necessary to remove some that were not damaged. In removing the pin-rails that were broken we found two or three planks on the bulwarks on the inside that were affected by rot. They were removed. No separate account of the expense of replacing these planks was kept. It was probably from $150 to $200. All other repairs were made in consequence of the damages sustained. I find upon examination that on her second visit she arrived here on the 26th of December, 1867, and sailed on the 11th of March, 1868. The dam-
119 ages spoken of above were damages that were told to me to have occurred by same collision.

Nothing was done except that was necessary to put her in seaworthy condition.

The repairs were conducted in the same manner as in the repairs of one of our own government vessels.

This was done under directions of the Secretary of the Navy. There was no charge for docking. The only expenses charged were for labor and materials. They amounted in all to 14,653 55, in currency.

This was the expense incurred here. At the time we made a survey we made a probable estimate of the expense of putting her in repairs. It was,

however, found, as the work progressed, that other repairs were necessary below the water-line, which we had not estimated; repairs necessary in consequence of the collision. The estimate was $8,375 94, in gold coin.

The injuries subsequently discovered were amidships below the water-line. In order to repair these damages, it would be necessary either to dock her or heave her down. The estimate made on the survey was at the time reduced to writing and signed.

It is almost impossible to make an accurate estimate of that kind.

120 On cross-examination the witness said:

Question. What was the condition of the "Euryale" on her first visit in September, and what repairs were made upon her?

(Objected to as immaterial.)

Answer. When she first came here it was reported by captain that her copper was off, and he wanted to have an examination for the purpose of looking at the sheathing copper. When docked, it was found much of the copper was off, and he desired to have the copper stripped off. The seams were found in bad condition, and she was recaulked, resheathed, and repainted. Some repairs were also made to her spars and bolts, and the planking outside; some pieces were put in.

Question. On the second visit, were any additions made in the way of strengthening her to a greater extent than the condition she was in on ther first visit, putting in any extra knees that she did not have originally, or anything of that kind?

(Objected to as immaterial.)

121 Answer. We put in 3 or 4 new beams on the berth-deck to replace those that were broken, and the beams were kneed of in order to give additional strength to her side where the damage was done, to make her as strong as before. The ceiling-plank were not removed, but the knees were put on the outside. We found the knees necessary in order to make her as strong as she was before. Nothing was done to the vessel, except the 2 or 3 planks mentioned, that was not rendered necessary by the collision.

Question. What was the amount of money expended on the repairs of the "Euryale" on her first visit?

(Objected to as immaterial.)

Answer. Seven thousand one hundred and ninety-seven $\frac{65}{100}$ dollars, currency.

Question. According to the best of your judgment, what was the value of the "Euryale," before repaired, on her first visit?

(Objected to as immaterial.)

Answer. I did not pay particular attention; she was very strongly built as a war vessel, and built of the very best material. I don't know her cost. I judge when she was built her hull might have cost

122 $20,000 or $30,000 in gold coin, built in France. I think I could build as good a vessel here for the same price. We put no exact repairs in her; we did nothing but what was necessary to make her seaworthy. She was no better, probably not so good, as she was before the collision.

MEVILLE SIMMONS.

Subscribed and sworn to before me, at Vallejo, in said district, on this 10th day of October, A. D. 1868.

GEO. E. WHITNEY,
Commissioner, &c.

District court of the United States for the district of California.

NAPOLEON III, ETC., }
vs.
SHIP SAPPHIRE, ETC. }

Be it remembered that on this 14th day of Oct'r, A. D. 1868, at my office in the United States court building in the city of San Francisco, personally appeared before me, Geo. E. Whitney, a commissioner, to take acknowledgment of bail and affidavits, etc., duly appointed by the circuit court of the United States for the district of California, A. Parrayon, a witness on the behalf of the libellant in the above-entitled suit.

M. Andros, esqr., appeared as proctor for the libellant, and
123 Cutler McAllister, esqr., as proctor for the claimants.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as follows, that it to say:

In the district court of the United States, dist. of California.

NAPOLEON III, &c., }
vs.
SHIP SAPPHIRE, ETC. }

My name, August Parrayon; am commander of the French ship "Euryale;" was in command of her in December last, when she collided with the "Sapphire."

I went to the navy yard at Mare Island to repair the damages in consequence of the collision. I paid for towage up and down, $250 gold; I paid for pilotage to and from, $300 gold. After wee were towed away from the "Sapphire" on the morning after the collision, we were towed to anchored and on the south side of Alcatraz Island. I don't know by whom we were anchored; I was not on board. I think two days after we were obliged to be towed from this anchorage to North Point.
124 We came near being lost where we were. We were first anchored off "Alcatraz," and we were removed by the harbor-master, Mr. Houseman.

I asked for it, and he found it to be necessary. We had to buy an anchor to replace the starboard waist anchor which had been lost in consequence of the collision. We found one anchor, but this one we could not find. I paid for this anchor $281 20 gold. The value of the anchor I bought is not half the value of the one I lost. The one I lost was a little less than 4,000 lbs.; the one I bought was about 2,500 lbs. The one I bought was delivered at San Francisco, but in order to fit the davits I was obliged to have it sent to Mare Island. The freight to Mare Island was $25. I paid $300 coin to the "Goliah" for being removed from off "Alcatraz" Island to "North Point." I purchased $168 of wire rigging at San Francisco, to replace that damaged by the collision. This is not included in the expenses which I incurred at the island. After the collision I recovered one anchor and chain which was shipped in consequence of the collision.

Mr. De Fries recovered the anchor and chain, for which I paid him $150 coin.

A. PARRAYON.

Subscribed and sworn to this 14th day of October, 1868, before me.

GEO. E. WHITNEY,
Com'r U. S. Courts, Dist. of California.

(Endorsed:) Filed and published January 4th, 1869, by order of com'r.
GEO. E. WHITNEY, *Clk*,
By A. D. GRINWOOD, *D. C.*

Notice.

UNITED STATES OF AMERICA, *District of California, ss:*

District court of the United States, January 5th, 1869.

NAPOLEON III, EMPEROR OF FRENCH, *vs.* SHIP "SAPPHIRE," ETC. } In admiralty.

GENTLEMEN: Please take notice that the report of the commissioner, to whom said cause was referred to assess damages, has been filed and published, and that on Saturday morning, January 9th, 1869, at 11 o'clock, before said court, I shall move that the same be affirmed, and a decree be entered in accordance therewith.

Yours, truly,

MILTON ANDROS,
Proctor Libellant.

Messrs. H. & C. MCALLISTER,
Proctor for Claimants.

Service admitted this 5th day of Janu'y, 1869.
H. & C. MCALLISTER AND BERGIN.

Filed Jan'y 5th, 1868.

GEO. E. WHITNEY, *Clerk*,
By H. F. LARDNER, *D. C.*

Order.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Saturday, the ninth day of January, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, the Honorable Ogden Hoffman, judge.

NAPOLEON III, EMPEROR OF THE FRENCH, *vs.* THE SHIP "SAPPHIRE." }

Ordered, on motion of Mr. Andros, (proctor for claimant not appearing to object,) that the libellant's motion for confirmation of the commissioner' report herein, heretofore noticed for this day, be, and the same is hereby, continued until Tuesday, January 12th, A. D. 1869.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San

Francisco, on Tuesday, the twelfth day of January, in the year of our Lord one thousand eight hundred and sixty-nine:
Present, the Honorable Ogden Hoffman, judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
vs.
SHIP SAPPHIRE, &c.

On motion of Milton Andros, esqr., proctor for libellant, no one appearing to appear the same, ordered that the report of the commissioner heretofore filed herein be, and the same is hereby, in all things confirmed.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of
128 San Francisco, on Wednesday, the thirteenth day of January, in the year of our Lord one thousand eight hundred and sixty-nine:
Present, the Honorable Ogden Hoffman, judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
vs.
THE SHIP SAPPHIRE ET AL.

In this cause due consideration having been thereon had, it is by the court now here ordered that the decree this day signed in favor of the libellant be forthwith filed and entered herein.

Final decree.

UNITED STATES OF AMERICA,
District of California, ss:

District court of the United States, January 13th, 1869, in admiralty.

At a stated term of the district court of the United States of America, holden at San Francisco, within and for the district of California, on the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-eight:
129 Present, the Honorable Ogden Hoffman, district judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
vs.
THE SHIP "SAPPHIRE," ETC.—G. C. TRUEFANT et al., claimants.

And now, on reading and filing the report of George E. Whitney, the commissioner to whom the above matter was referred, to ascertain and report the amount of damages due the libellant, by which there is reported due the said libellant, for damages demanded in said libel, the sum of sixteen thousand four hundred and seventy-four dollars, it is now ordered, adjudged, and decreed, on motion of Milton Andros, proctor for the libellant, that the said report be, and the same hereby is, in all things conformed; and that the said G. C. Truefant and the said J. R. Tibbitts, the owners of said ship "Sapphire," and claimants thereof in this cause, do pay to the said libellant the sum of fifteen thousand dollars, being a part of the sum so reported as due to him, and the amount demanded in said libel. And on like motion it is further

ordered, adjudged, and decreed that a summary judgment be, and the same hereby is, entered against the said G. C. Truefant and the said J. R. Tibbitts, claimants and owners of said ship "Sapphire,"
130 etc., and Henry Blanchard, sureties on the bond given for the value of said ship on her release for fifteen thousand dollars; and that the said libellant have execution therefor, and for his costs.

OGDEN HOFFMAN,
Dist. Judge.

Filed January 13th, 1869.

GEO. E. WHITNEY,
By A. D. GRIMWOOD, *D. C.*

In the district court of the United States for the district of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III, libellant,
vs.
SHIP "SAPPHIRE," &c., ET AL. "CLAIMants."

Please take notice that the claimants herein intend to appeal to the circuit court of the United States for the district of California, from the final decree of the court in this case.

Dated San Francisco, Janu'y 22d, 1869.

H. & C. MCALLISTER,
Proctors for Claimants.

To GEO. F. and W. H. SHARP,
Proctors for Libellant,
And GEORGE E. WHITNEY,
Clerk of said Court.

131 Due service of a copy of within notice of appeal upon us this day hereby admitted.

Dated San Francisco, Jan'y 23, 1869.

MILTON ANDROS,
Proctor for Libellant.

Filed January 23d, A. D. 1869.

GEO. E. WHITNEY, *Clerk*,
By A. D. GRIMWOOD, *D. C.*

In the district court of the United States for the district of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III,
v.
THE SHIP "SAPPHIRE," ETC., & ALS.

I, George E. Whitney, clerk of the district court of the United States for the district of California, do hereby certify that the foregoing one hundred and ninety-nine pages constitute a full and true transcript of the record and proceedings of the said district court in the above-entitled case, on appeal from the said court to the circuit court of the United States for said district.

In testimony whereof I have hereunto set my hand and affixed the

seal of said court, at San Francisco, this 10th day of June, A. D. 1869, and of our independence the ninety-third.

GEO. E. WHITNEY, *Clerk*,
By A. D. GRIMWOOD, *D. C.*

Apostles filed in circuit court June 10th, 1869.

GEO. E. WHITNEY, *Clerk*,
By C. W. GRANT, *Deputy.*

132 *Bond on release.*

District court of the United States for the northern district of California.

Know all men by these presents that we, Truefant and Tibbetts, claimants, and Henry B. Williams and H. P. Blanchard, sureties, are held and firmly bound unto Charles W. Rand, esquire, marshal of the United States for the northern district of California, in the sum of thirty thousand dollars, to be paid to the said Charles W. Rand; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the 31st day of December, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas a libel has been filed in the district court of the United States for the northern district of California, on the 24th day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by the Emperor of the French, Napoleon III, libellant, against the ship "Sapphire," &c., for the sum of fifteen thousand dollars, on which
133 process of attachment has issued, and the said ship "Sapphire," &c., is in custody of the marshal under the said attachment, and Truefant and Tibbetts, claimants, has applied for a discharge of said ship "Sapphire," &c., from the custody of the marshal, and has filed a claim claiming the said ship "Sapphire," &c., as owner, and has filed a stipulation for the claimants' costs, pursuant to the rules and practice of the said court:

Now, therefore, the condition of this obligation is such, that if the above-bounden Truefant and Tibbetts, claimants, shall abide by and perform the decree of this court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

TRUEFANT AND TIBBETTS,
By A. P. BOYD. [L. S.]
H. B. WILLIAMS. [L. S.]
HENRY P. BLANCHARD. [L. S.]

Sealed and delivered, and taken and acknowledged, this 31st day of Dec'r, 1867, before me.

A. D. SMITH,
U. S. Commissioner.

UNITED STATES OF AMERICA, *Northern District of California, ss:*

H. P. Blanchard and H. B. Williams, being duly sworn, deposes and says, each for himself, that he is worth the sum of thirty thousand dollars over and above all his just debts and liabilities.

134 H. B. WILLIAMS.
HENRY P. BLANCHARD.

Sworn to this 31st day of Dec'r, A. D. 1867, before me.
A. D. SMITH,
U. S. Commissioner.

(Endorsed:) Filed Dec. 31st, 1867.
GEO. E. WHITNEY, *Clerk*,
By A. D. SMITH, *D. C.*

Filed in cir't court the 10th day of June, 1869.
GEO. E. WHITNEY, *Clerk.*

135 *Appeal to circuit court.*

In the circuit court of the United States for the district of California in the ninth circuit.

SHIP SAPPHIRE, AND G. C. TRUEFANT AND J. R. Tibbetts, claimants and appellants,
vs.
EMPEROR OF THE FRENCH, NAPOLEON III, libellants and appellee.

To the honorable the circuit court of the United States for the district of California in the ninth circuit:

The appeal of the above-named appellants respectfully showeth that on or about the 24th day of December, A. D. 1867, the above-named libellant, the Emperor of the French, Napoleon III, exhibited his libel, in the district court of the United States for the district of California, against the ship "Sapphire," her tackle, apparel, and furniture, and said appellants claiming the sum of fifteen thousand dollars as damages by reason of a collision in said libel set forth, praying, among other things, for the reasons set forth in said libel, that said ship "Sapphire" and appellants might be condemned to pay the [the] said demand of
136 said libellant and costs in said libel mentioned.

That process issued out of said court having been served, said ship "Sapphire" was attached thereunder, and after the filing of a claim by appellants and of a duly approved "bond," said ship "Sapphire" was released; that on the 20th day of February, A. D. 1868, said appellants filed their answer to the said libel in the said district court, praying that the said libel be dismissed with costs in that behalf, as by reference to said libel and the said answer may more fully appear.

That the said cause came on to be heard before the Honorable Ogden Hoffman, judge of the said district court, on or about the 19th or 20th and 21st days of March, A. D. 1868, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties; and the said judge having advised thereon on the nineteenth day of May, A. D. 1868, made a decree on sentence in said cause, whereby it was, among other things, sentenced and decreed that the libellant is said cause recover against these appellants his damages caused by the collision set forth in said libel, as by reference to said decree may more fully appear, under which decree a reference was
137 had to the commissioner of this court, who reported the amount of said damages, which said report was confirmed; and upon the 13th day of January, A. D. 1869, a final decree was entered herein, fixing said damages and awarding the same at the sum of fifteen thousand dollars.

And these appellants are advised, and insist, that the said decrees are

erroneous, inasmuch as the said libellant was not entitled to any damages in the premises.

And these appellants, for these and other reasons, appeal from the whole of the said decree in favor of said libellant, the Emperor of the French, Napoleon III, to the next circuit court to be held in the said district, and on the said appeal they intend to have said cause heard anew in the circuit court, on the pleadings and proofs in the district court, and other proofs to be introduced in the said circuit court.

G. E. W., Clk. By A. D. G., D. C. And they pray that the record and proceedings may be returned to the said circuit court, and that the said decree

G. E. W., Clk. By A. D. G., D. C. may be reversed, or such other decree hereupon be made as to said circuit court shall seem just; and that the appellees may be condemned to pay to the appellants their costs and damages in the premises.

Dated San Francisco, January 20th, 1869.

G. C. TRUEFANT AND J. R. TIBBETTS,
By H. & C. McALLISTER,
Proctor for Appellants.

138 (Endorsed:) Due service of a copy of within appeal on me this day hereby admitted.

MILTON ANDROS,
Of Proctors f'r Lib'l'ts.

Dated San Francisco, Feb. 2nd, 1869.

Filed Feb'y 2nd, 1869.

GEO. E. WHITNEY, *Clerk*,
By A. D. GRIMWOOD, *D. C.*

139 At a stated term of the circuit court of the United States for the district of California, held, pursuant to adjournment, at San Francisco, on Monday, the 31st day of May, 1869:

Present, Hon. Stephen J. Field, judge.

THE SHIP SAPPHIRE, APPELLANT,
vs.
THE EMPEROR OF THE FRENCH, LIBELLANT and appellee.

By consent of counsel for the respective parties, it is ordered that this cause be submitted on briefs to be filed in ten days.

140 At a stated term of the circuit court of the United States for the district of California, held, pursuant to adjournment, at San Francisco, on Thursday, the 24th day of June, 1869:

Present, Hon. Stephen J. Field, judge.

THE EMPEROR OF THE FRENCH
vs.
THE SHIP "SAPPHIRE."

This cause, on appeal from the decree of the district court, having been heretofore submitted to the court upon briefs, and due consideration having been thereon had, it is this day ordered that the decree of the district court heretofore rendered herein be, and the same is hereby, affirmed.

141 *Decree.*

At a stated term of the circuit court of the United States of America for the district of California, held in the city and county of San Francisco, on the 24th day of June, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, Honorable Stephen J. Field, judge of the court and associate justice of the Supreme Court of the United States.

THE SHIP "SAPPHIRE," ETC.—G. C. TRUEFANT & J. R. Tibbetts, claimants and appellants,
vs.
THE EMPEROR OF THE FRENCH, NAPOLEON III, Emperor of the French, libellant and appellee.
} In admiralty.

This case having been brought on for hearing on appeal from the district court of the United States for the district of California, upon the transcript on file, and no new proof having been taken in the cause in this court, and said transcript and arguments of the advocates for the respective parties having been examined and heard; now, on this day, it is ordered, pronounced, and decreed that the said libellant and appellee do have and receive of this said claimants and appellants the sum
142 of fifteen thousand dollars, and the costs taxed in the court below at one hundred and fifteen dollars and fifty cents, and also the costs to be taxed in this court.

And it is further ordered, pronounced, and decreed that a summary judgement be, and the same hereby is, entered against G. C. Truefant and J. R. Tibbetts, the appellants, and Henry B. Williams & Henry P. Blanchard, sureties on the appeal bond on file herein, for the said amounts, and that the libellants and appellee do have execution therefor.

Filed 4.

(Endorsed:) Filed July 2nd, 1869.

GEO. E. WHITNEY, *Clerk*,
By C. W. GRANT, *Dep'y*.

143 At a stated term of the circuit court of the United States for the district of California, held, pursuant to adjournment, at San Francisco, on Tuesday, the 6th day of July, 1869:

Present, Hon. Stephen J. Field, judge.

THE SHIP "SAPPHIRE," ETC.,
vs.
THE EMPEROR OF THE FRENCH.

On motion of advocate for claimant and appellant, it is ordered that an appeal to the Supreme Court of the United States from the decision of this court be, and the same is hereby, allowed.

144 *Appeal to Supreme Court.*

In the circuit court of the United States for the district of California in the ninth circuit.

SHIP "SAPPHIRE," & TRUEFANT AND TIBBETTS, claimants and appellants,
vs.
NAPOLEON III, EMPEROR OF THE FRENCH, libellant and appellee.

To the honorable the Supreme Court of the United States:

The appeal of Truefant and Tibbits, the above-named appellants, respectfully showeth that, on the 24th day of December, A. D. 1867, the above-named Napoleon III, Emperor of the French, filed his libel in the district court of the United States for the district of California against the ship "Sapphire," her tackle, apparel, &c., in a cause civil and maritime for the recovery of damages alleged to have been sustained by him to the French transport "Euryale" by collision with the said ship "Sapphire" in the bay of San Francisco; and that the said ship "Sapphire" was arrested upon process issued upon said libel, and was discharged on your petitioners filing their claim and entering into stipulation; and your petitioners, therefore, filed their answer to said libel, and
145 such proceedings were had in the said cause that, on the 13th day of January, A. D. 1869, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the said libellant recover against the ship "Sapphire," her tackle, &c., the sum of fifteen thousand dollars, together with costs.

And that after such final decree your petitioners duly appealed therefrom to the circuit court of the United States for the district of California, and the said cause was removed thereby into the said circuit court and there tried anew, and such proceedings were had in the said circuit court that afterwards, on the second day of July, A. D. 1869, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed with costs, and that the said appellee have execution, and that the stipulators cause their stipulations to be fullfilled; which said decree of the said circuit court is, as these appellants are advised, erroneous, and ought to be reversed.

Whereupon these appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and
146 respectfully pray that the said decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew; and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made dismissing said libel with costs, or such other decree as to the said Supreme Court shall seem just.

Dated San Francisco, July 15th, 1869.

H. & C. McALLISTER,
Proctors for Appellants.
TRUFANT AND TIBBETS,
By WILLIAMS, BLANCHARD & CO'Y, *Ag'ts.*

(Endorsed:) Filed July 16th, 1869.
GEO. E. WHITNEY, *Clerk*,
By C. W. GRANT, *Dep'y.*

147 *Citation.*

By the Honorable Ogden Hoffman, judge of the district court of the United States for the district of California, and associate judge of the circuit court of the United States for the district of California, to Napoleon III, Emperor of the French:

Whereas Truefant and Tibbetts, claimants of the ship "Sapphire," her tackle, &c., have lately appealed to the Supreme Court of the United

States from a decree lately rendered in the circuit court of the United States for the district of California, in the ninth circuit, made in favor of you, the said Napoleon III, Emperor of the French, against the said ship "Sapphire," her tackle, &c., and have filed the security required by law; you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on or before the first day of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of San Francisco, in the district of California, in the ninth circuit, the 26th day of July, A. D. 1869, and in the year of the independence of the United States the ninety-fourth.

G. E. W., Cl'k
By A. D. G., D. C.

OGDEN HOFFMAN,
Dist. Judge.

148 Service of a copy of within citation upon us this day hereby acknowledged.

San Francisco, July 26, 1869.

MILTON ANDROS,
Proctor for Appellee.

(Endorsed:) Filed July 26th, 1869.

GEO. E. WHITNEY, *Clerk*,
By A. D. GRIMWOOD, *D. C.*

149 In the United States circuit court, district of California.

SHIP "SAPPHIRE," ETC., & AL., CLAIMANT & Appellant,
vs.
NAPOLEON III, EMPEROR OF THE FRENCH, libel't & appellee.

It is hereby stipulated and agreed that the testimony and depositions contained in the transcript of said cause on file herein shall constitute the statement of evidence on appeal required by the rules of this court.

July 6th, 1869.

G. F. & WM H. SHARP,
MILTON ANDROS,
Proctors for Appellees.
H. & C. MCALLISTER,
Proctors for Appellants.

Filed July 26th, 1869.

GEO. E. WHITNEY, *Clerk*,
By A. D. GRIMWOOD, *D. C.*

150 I, George E. Whitney, clerk of the circuit court of the United States for the district of California, hereby certify that the foregoing one hundred and forty-nine pages of writing are a full and true copy of the record and proceedings in said circuit court in the cause of the ship "Sapphire," etc., & al., claimants and appellants, vs. Napoleon III, Emperor of the French, libellant and appellee, now on appeal from said circuit court to the Supreme Court of the United States.

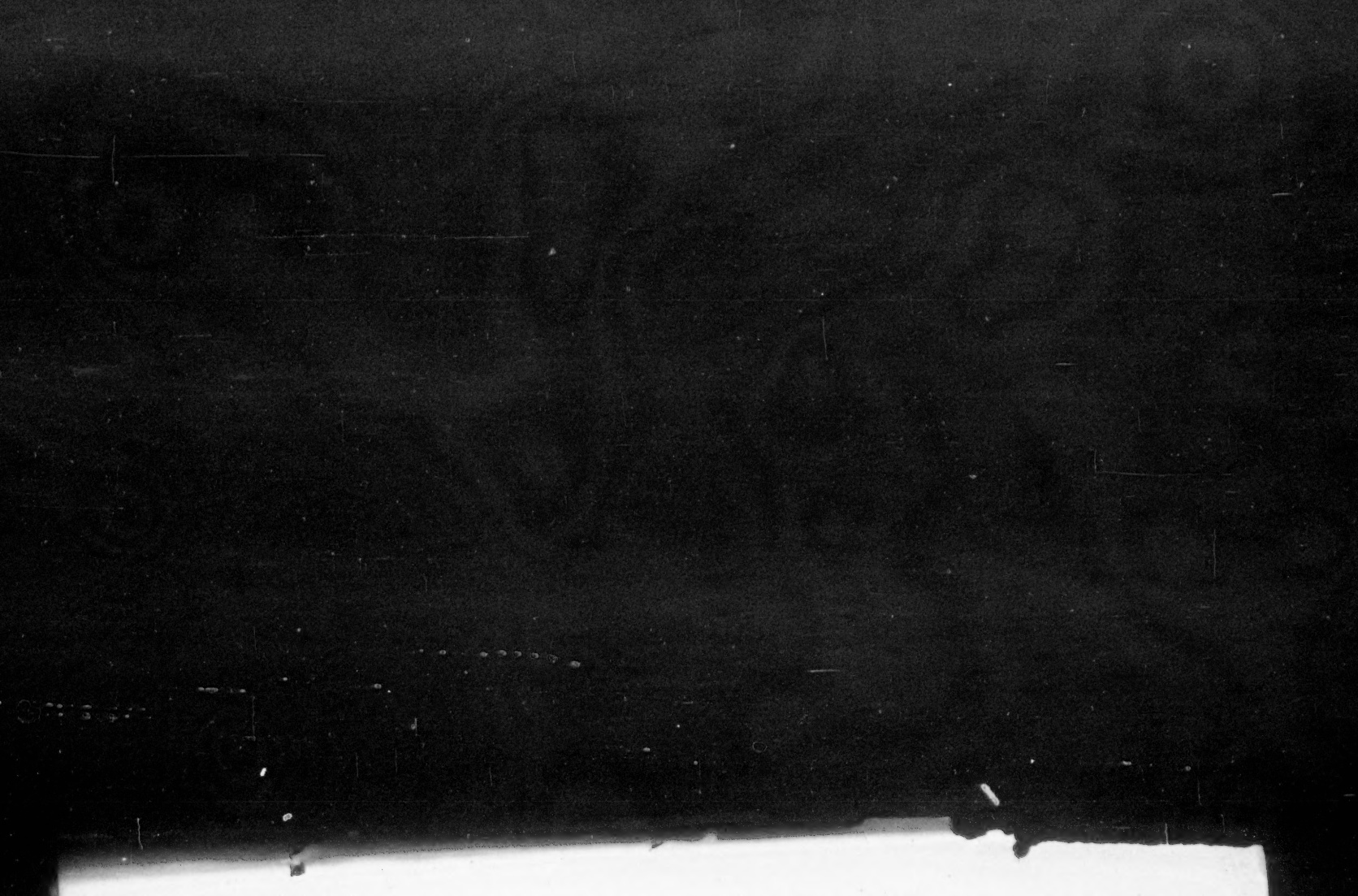
In witness whereof I have hereunto set my hand and affixed the seal

of said circuit court, at San Francisco, in the district of California, this 25th day of October, A. D. 1869, and of the independence of the United States the ninety-fourth.

[SEAL.] GEO. E. WHITNEY, *Clerk.*

(Indorsement on cover:) No. 332. The ship Sapphire, &c.—G. C. Truefant and J. R. Tibbetts, claimants—appellants, vs. Napoleon III, Emperor of the French. California C. C. U. S.

Filed 7th December, 1869.



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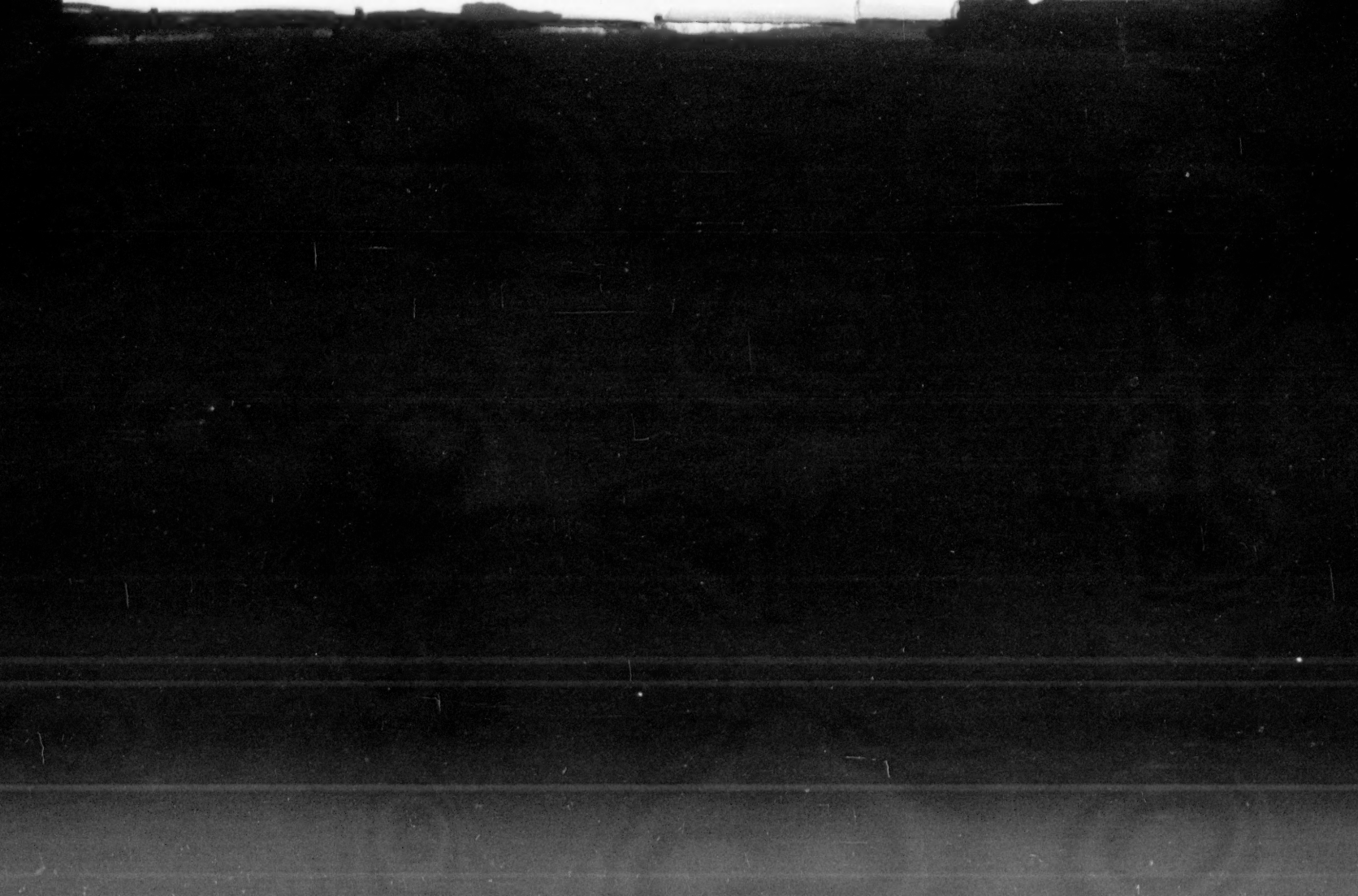

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SHORT STATEMENT.

On Saturday, December 21st, 1867, the Ship "Sapphire" and the French Transport "Euryale," were at anchor in the harbor of San Francisco, each having out one anchor. The libel avers, and the answer admits, that the vessels were distant from each other three hundred yards. It was in evidence that two hundred and fifty yards distance was a good and safe anchorage; no witness testified to the contrary. Each vessel was taken to its place of anchorage by a Pilot.

Sprague (Record, p. 18,) testified that the "Sapphire" hauled out on the 18th of December; that Captain Boyd and a Pilot had charge. The "Euryale" was anchored several days earlier.

From 2 o'clock, Sunday morning, until 5, at which time a collision occurred, the wind was strong, very violent, heavy squalls and gales, accompanied with rain. The witnesses concur as to the violence of the wind and rain, and consequent darkness.

The libel, (*Article Fourth*,) avers that the "Sapphire" was moored three hundred yards distant from the "Euryale;" that about 2 o'clock, in the morning, the "Sapphire" was noticed to be dragging her anchors; that about fifty minutes past four she struck the "Euryale," the wind blowing heavily.

In the *Fifth Article* it is averred that the "Sapphire" had not a proper lookout and watch; not properly manned and fitted; had not on board the proper complement of officers and men; that the collision was occasioned wholly by the negligence, and inattention and want of proper care and skill on the part of the Master and Crew of the "Sapphire."

In the *Sixth Article* it is averred "that the collision would not have occurred if the Ship Sapphire's cables had been properly adjusted to meet the strength of the wind and rain."

No evidence was offered in support of the specific allegations that the "Sapphire" had not a proper lookout and watch; was not properly manned and fitted; had not on board the proper complement of officers and men. On the contrary it was clearly established by the testimony that the "Sapphire" was properly manned and equipped, had a full complement of men, who were on duty during the night, and at the time of the collision. (Testimony of Sprague, Record, p. 18, and of Aeaston, p. 21.) Such was the opinion of the District Judge, (Printed Opinion, p. 2,) in which it is stated "both vessels had a full compliment of officers and men." "The mates and crew of the "Sapphire" appear to have been upon deck during the whole night and up to the moment of collision."

There is no proof that the supposed dragging of anchors of the "Sapphire" as seen from the "Euryale," at two o'clock, had any influence upon those who were in charge of the "Euryale," or produced any greater care or vigilance on their part.

The negligence and want of care on the part of the "Sapphire," stated in the *Fifth Article* of the libel, in *general terms*, after and following certain special averments, must be regarded as limited to the particular and certain allegations contained in the Article, and must stand or fall therewith. General and uncertain allegations in Admiralty Pleadings, are not favored; they, certainly, cannot enlarge the special and certain allegations which precede them.

POSITIONS.

I. Since the institution of the suit Napoleon has ceased to be the Emperor of France. He has been deposed, and the suit cannot be maintained or prosecuted in his name.

A. When a government institutes a suit in the Courts of another, for the protection of its public property, the name in which the suit should be instituted depends upon the form and character of the government which brings suit. If it is an Empire, the suit should be in the name of the Emperor, and upon proof that the property is public, and belongs to the Empire, the suit is well brought in the name of the individual who is in possession of the sovereign authority.

If the government is of a republican form, the suit should be in its corporate name, as a body politic, and not in the name of an individual who may be clothed with the chief executive authority. Whether the present *de facto* Government of France has been recognized by the United States, is a matter of which the Court will take judicial notice; the Court, if it shall require information upon the subject, will obtain it at the State Department.

II. The conversation, on shore, the day after the collision, which was had between the Commander of the "Euryale" and the Master of the "Sapphire" if competent and admissible, was so only, if it had any tendency therefor, to contradict the testimony of the Master. Any admissions supposed to have been made by him, cannot bind the owners as to the cause of the collision, and should not have been considered by the District Judge as evidence upon the question of liability on the part of the "Sapphire."

Testimony of Parrayon, Record, pp. 9 and 10.
Testimony of Dubedat, Record, p. 15.
Opinion of District Judge, p. 8.

III. It is submitted, as hereinbefore set forth, that the *certain and special allegations*, contained in the *fifth article* of the libel have not been established in proof; as a consequence of this failure, the libellant, if admitted to rely upon general allegations, was bound to sustain them by clear and undoubted evidence. He was bound to show negligence and want of care on the part of the ship, and that the collision resulted therefrom, *without fault on the part of the "Euryale."* This proof, it is most respectfully submitted, has not been supplied. The mere fact of a collision is not sufficient.

A. The libellant did not introduce testimony tending to show that the "Sapphire," on the 18th of December, was anchored so near to the "Euryale" as to create danger of collision; no intimation of dangerous proximity, during the following three days, was made by those on board the transport; the place of anchorage was selected by a Pilot; the evidence, which is found in the Record upon this branch of the case, shows that a distance of 300 yards was a good and safe anchorage.

Goodall, Harbor Master, (Record, p. 16, cross examination,) "two hundred and fifty yards is usually considered a good berth."

Mayo, (Record, p. 17,) "Am a pilot; for eight years." "I should consider two hundred and fifty yards, a cable's length, a safe anchorage."

No testimony was introduced to control the statements of Goodall and Mayo.

The diagram which appears in the Record, p. 27, made by Parrayon subsequent to the collison, and the opinion of one or two of the witnesses as to the distance at which the vessels were anchored, cannot control the averment in the libel, which is admitted by the answer.

Patterson, (Record, p. 30,) and *Waterhouse*, (p. 32, at the top,) severally say that the vessels were not anchored so near to each other as is indicated upon the diagram.

B. The "Sapphire" had out only one anchor. The "Euryale" and the "Cleopatra" had out only one anchor each. The "Euryale" continued through the night of the collision with only one anchor out; so also did the "Cleopatra." There is no evidence in the Record upon which to fasten blame, negligence, or want of skill upon the Master of of the "Sapphire," upon the ground that he did not, when originally anchored by the Pilot, put out a second anchor.

C. The Master of the "Sapphire" was not in fault for not putting out a second anchor, during the night of the collision, and before its occurrence, so as thereby to put upon the "Sapphire" and its owners the loss resulting from the collision.

In determining this question, the facts as they are shown in the proof to have existed during the night, are to be regarded as they appeared

and were known to the Master, his officers and men, at the time, and not by subsequent speculations. This is the rule, unless gross incompetency or carelessness is shown. That the Master, his officers and men were competent, and meant to perform their duty, cannot be denied; and, it is submitted, that the libellant has failed to show mistakes or negligence on the part of the Master and Crew, such as the law requires, as a basis upon which to fasten the loss upon the ship and its owners. The fact of a collision does not make out the case; the testimony upon this branch of the inquiry is slight and unsatisfactory.

Goodall, (Record, p. 16, cross examination,) says, "It would be better to let go a second anchor rather than to pay out more chain."

Noyes, (Record, p. 17,) says, "In truth, both vessels should have put down another anchor. The *old harbor regulations* required this. No vessel permitted to lie to a single anchor more than twenty-four hours."

D. The libellant does not show that the transport did not contribute to the loss; or that it might not, between two and five o'clock, have done more than it did do to avoid the collision.

Parrayon, Commander of the transport, (Record, p. 9,) says, "my port anchor was down on the night of the collision." "I quitted at 4, on Saturday, the barometer being very high; the weather cloudy." *When recalled*, (p. 17,) he says, "a ship like mine, being very high out of water, sheers very fast, it is true; but it is very difficult for her in a gale to sheer much to one side or the other, as her house on deck is very high, and I have two boats on the quarter deck. I remarked, after collision, that she did not sheer more than one or two points on one side or the other during the gale." "As the wind and tide were in opposite directions, and the wind twice the strongest, she must have dragged down on us, and would have cleared us if her anchor had not taken our chain.

This, so far as it relates to the collision, is mere opinion, as the witness was not on board at the time.

Noir, third officer of the "Euryale," (Record, p. 10 and 11,) "I thought I might have time to hoist my jib and haul the sheet to starboard to make the vessel take a sheer starboard. The "Sapphire"

would not have touched if her anchor had not hooked in our chain; she would have passed to starboard." "When I hoisted the jib our vessel did not sheer. My object was to give the "Sapphire" a wider berth. The anchor fouled with our chain almost at the same moment. I think we would have avoided collision if the anchor had not fouled." (On p. 12.) "I hoisted my jib to sheer my bows to port and let her pass by. She would have done so if she had not caught our chain."

Brasier, first officer of "Euryale" (Record, p. 14, cross examination,) "The intention of the third officer was to sheer the vessel off and avoid the collision. If the "Sapphire" had not come so quick it might have succeeded, or even if she had not hooked in the chain of the "Euryale."

Brioux, sailor, (Record, p. 15, cross examination.) The testimony of this witness clearly shows want of care on the part of those who were in charge of the "Euryale."

IV. The testimony is conflicting, nor are the statements of either side in all respects consistent. (Opinion of District Judge, p. 2.)—It does not furnish such proof of negligence and want of care on the part of those who were in charge of the ship as should be required.

The Ligo, 2 *Hagg. Ad. Rep.* 360. "The law requires that there should be preponderating evidence to fix the loss on the party charged, before the Court can adjudge him to make compensation."

The evidence in the case at bar does not come up to this requirement. It shows that the "Sapphire" was seen from the "Euryale" three hours before the collision; that the last named vessel had out only one anchor. This must be regarded as a fault on the part of the "Euryale," if the "Sapphire" was in fault for a similar reason. There is much in the testimony tending to show that those on board the "Euryale" did nothing to prevent the collision, between two and five o'clock.

Parrayon, the Lieutenant Commanding, (Record, p. 9,) as already stated, was not on board at the time of the collision. He says: "I quitted at 4 o'clock, on Saturday, the barometer being very high; the weather cloudy."—"My port anchor was down on the night of the collision."

Le Noir, (Record, p. 10–11.) "The collision occured at 10 minutes past 5 o'clock. The wind became very strong about 2½ o'clock. Very violent at moment of collision — raining very hard. When I last saw the "Sapphire" it was about 3 o'clock. After that the weather became so thick I could not see her. At 2½ I was told by another officer that the wind was freshening. Half an hour later was told the "Sapphire" was approaching—came on deck and saw she had come nearer—gave directions and went below." (Page 11.) "I next came on deck at 5 o'clock; "Sapphire" coming down on us; weather very bad; two or three minutes before collision I ordered the jib hauled; the "Sapphire" had not yet reached us; she was on our starboard and as she had the wind aft, I thought I might have time to hoist my jib and haul the sheet to starboard, to make the vessel take a sheer starboard; the "Sapphire" would not have touched if her anchor had not hooked in our chain; she would have passed to starboard."—"We had starboard anchor out."

Deveaux, (Record, p. 12.) "She (the ship) had two anchors out at 4 o'clock. They had given her more chain twice." (Page 13.) "At 5 o'clock only the guard or watch was on deck; the wind so strong we could not hoist the jib with 8 men, which composed the watch; between 4 and 5 she (the ship) did not change her position; from about 1-4 of an hour after she dropped her second anchor up to 5 minutes." "Am positive I heard the persons on "Sapphire" pay out chain and let go second anchor." "At 4 o'clock I made report that the "Sapphire" was approaching." Made no report between 4 and 5.

Paul Brasier, (Record, p. 13,) "I am first officer of the "Euryale," was on deck from 10 to 11. *Cross Examination*, (Record, p. 14,) "The intention of the third officer was to sheer the vessel off and avoid the collision. If the "Sapphire" had not come so quick it might have succeeded, or even if she had not hooked in the chain of the "Euryale." "I think if the jib had been hoisted half an hour, provided the "Sapphire" had not hooked our chain. If I had put my jib-sheet to starboard I might have sheered to port the length of the chain." "No report was made to me that the "Sapphire" was dragging on to us. I was in command of the ship, (the Transport.)

A. This evidence, coming from those on board the "Euryale," is ample to show that between two o'clock, when they supposed the

"Sapphire" was dragging her anchor, and five, at which hour the collision occurred, nothing was done to avoid it, or to diminish the consequences.

B. Sprague, second officer of the "Sapphire," (Record, p. 19,) "I noticed the French ship all my watch: she was lying a little on our quarter. When the tide commenced to flood she sheered in shore. It was light enough for me to see her that night. She next sheered off shore, and then into us. When she sheered off shore she headed a little towards our starboard quarter."

Aeaston, (Record, p. 22,) "The French ship, at five o'clock, took a sheer in towards town. She was laying to the northward and westward of us. She sheered in, I dare say, all of 600 yards, until her light went out. Cannot tell how much chain she had out." (p. 23,) "From the best of my opinion she (the Transport,) did drag." This witness speaks with confidence that the French vessel sheered.

Patterson, chief officer of the "Cleopatra," (Record, p. 25,) "Just before the collision the French ship set her jib; she cut and sheered about considerable, a great deal." "The Cleopatra had out only one anchor." (p. 28, near the close,) "I could see the Frenchman sheering about with the tide." "Across the tide, back and forward. The French ship being lighter than the "Sapphire," the wind had more effect on her than the tide did and caused her to shove about." (p. 29,) "I think that both ships had dragged their anchors, because both were nearer to us than they were when they anchored. I cannot tell how much they dragged."

Waterhouse, (p. 32,) "We had our port anchor down; the starboard at the cathead already. I did not see any particular danger at all. The Captain told me that if she was likely to start to put the second anchor down. 'Twas puffy and squally, and I would occasionally go and feel the chains to see whether she was dragging or not. I did not see the ship dragged any; could not tell by the anchor or by the lights ashore that she was dragging."

Boyd, Master of the "Sapphire." (Record, p. 35.) From his testimony it is evident that he acted throughout in accordance with his

best judgment. He was on deck from 4 o'clock until after the collision. The District Judge, in his opinion, (p. 4,) says, he testified with much candor and caution. (p. 39, near the close,) he says, "she (the transport) felt the tide in shore before we did: she was sheering about with the wind and tide. That was the time that I saw by the lights that she was sheering in shore. I could not see her hull. Had she then, when she sheered in shore, let go her other anchor, it would have prevented all collision."

V. If the entire testimony be regarded, the libellant has failed to sustain his case by the preponderating evidence which the law requires as essential to charge the "Sapphire" and its owners, with the loss—the most favorable view of the case, for the libellant, is that the collision was the result of inevitable accident. The District Judge was evidently in more or less doubt upon the case as presented to him. He places his conclusion upon the ground that the "Sapphire" should have anchored, in the first instance at a greater distance from the "Euryale," or should have put out a second anchor, before the collision.

C. B. GOODRICH.

Supreme Court of the United States.

DECEMBER TERM, 1870.

Truefant and Tebbets, Claimants and Appellants,
vs.
Napoleon III, Appellee.

ADDITIONAL BRIEF OF THE APPELLANTS.

I. The sovereign of a country, the public rights or property of which have been destroyed, or injured, by a citizen of another country, cannot maintain suit against such citizen, in the judicial tribunals of the country to which such citizen belongs, to recover compensation for the injury. The remedy, and the only remedy, of the foreign sovereign is by diplomatic correspondence and arrangement between the two countries. The repose of nations, and their intercourse with each other, cannot be maintained, if sovereign rights are to be ascertained and adjudicated by a suit, in the name of the foreign sovereign, against a private citizen by whom they may have been violated.

A. The case before the Court illustrates the propriety of the principle and reason upon which the position is taken. The claimants cannot call upon Napoleon, to answer interrogatories, upon oath, under the admiralty rule which requires libellants to answer. The owners of the "Sapphire," in their answer, say that the collision was caused by the fault of the French Transport. If this be true, they cannot obtain a warrant for the arrest of a vessel, belonging to the Navy of France, which is in our harbor in the charge of a Lieutenant.

Duke of Brunswick vs. *The King of Hanover*, 6 *Beav.* 1.
Same Case, 2 *House of Lords Cases*, 1.
Hullet vs. *The King of Spain*, 1 *Dow & Clark*, 169.
Same Case, 1 *Clark & Fin.* 333.
Prioleau vs. *United States and Andrew Johnson*, *Law Reports*, 2 *Equity Cases*, 659.

The last case, in its result, presents difficulties attending a suit in the name of a foreign government, which can be surmounted only by holding that a foreign sovereign cannot maintain suit in the courts of another country, against its citizens, for the purpose of vindicating his sovereign rights. In the assertion of individual private rights, he may have suit.

The cases cited say, that a foreign sovereign, by the institution of a suit, submits to the jurisdiction of the court divested of his sovereign rights; must answer to a cross bill, upon oath; make discovery, or put some one forward, as party to the suit, who can. This shows that his sovereign rights cannot with propriety become the subject of a suit.

Brown vs. *Duchesne*, 19 *How.* 183. This shows that the French Transport is not liable to arrest.

The Schooner Exchange vs. *M. Faddon*, 7 *Cranch*, 116.
The King of Spain vs. *Oliver*, 2 *Wash. C. C.* 431.
The Pizarro, 10 *New York Leg. Obs.* 97.
The Athol, 1 *W. Rob.* 374.

B. The Constitution provides that the judicial power of the United States shall extend to all cases, in law and equity, "between a State and the citizens thereof, and foreign States, citizens and subjects." By an amendment it is provided that "the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another State, or by *citizens or subjects* of any foreign State."

If these provisions are construed literally, a foreign State or sovereign, if permitted to sue in any case, may sue a State of the Union, by original process from the Supreme Court of the United States. This result can be avoided, only, by holding that a foreign State or sovereign cannot maintain a suit, in any court of the United States, or of any one of the several States, to enforce a sovereign, or public right, either of property or of contract. In the early English cases, it seems to have been taken for granted, that a foreign sovereign might sue, or be sued in the courts of England. This theory is impracticable and inconsistent with the character and harmony which should pervade and control the intercourse of nation with nation. The error of the English theory is manifest from

the condition and embarrassment to which it brought the court, in the case of Prioleau. In all the cases which have been before the English courts, it has been conceded, that a foreign sovereign could not be sued for any act, or matter, right or wrong, growing out of the exercise of his sovereign prerogatives. Upon principle, it is submitted, that it is equally clear that a foreign sovereign, or State, should not be allowed to enforce sovereign rights, or obtain redress for an injury thereto, by suit against a private citizen by whom such rights may have been invaded, or by whom the injury may have been produced.

C. The result of the position, if sustained, is that the sovereign right, or title set up by the libellant is not a matter of judicial cognizance. The objection may be taken at any stage of the cause, or by the Court, of its own motion.

D. In the admiralty, as in equity, there should be a mutuality of remedy. In the case of specific performance, whenever from personal incapacity, the nature of the contract, or any other cause, the contract is incapable of being performed, against one party, that party is equally incapable of enforcing it against the other, though its execution in the latter way might in itself be free from the difficulty attending its execution in the former.

C. B. GOODRICH.

Claimants Ship Subscriber

vs

Napoleon III

Verified Bill of Claimants

No. .....

IN THE

SUPREME COURT

OF THE

UNITED STATES.

THE SHIP SAPPHIRE, ETC., TRUEFANT, et al.,

Claimants and Appellants,

VS.

Nnapoleon III, Emperor of the French,

Libellant and Appellee.

Brief for Appellee.

G. F. SHARP.
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SAN FRANCISCO:
E. BOSQUI AND CO., PRINTERS, LEIDESDORFF ST. COR. CLAY
1870.

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THE SHIP SAPPHIRE, ETC.

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Claimants, Appellants,

vs.

NAPOLEON III, EMPEROR OF THE FRENCH,

Libellant, Appellee.

BRIEF FOR APPELLEE.

On the 14th, day of December, 1867, the barque *Euryale*, of about four hundred and fifty tons burden, belonging to the French Navy, was anchored in the Bay of San Francisco. about six hundred yards distant from Pacific street wharf. When first anchored, she had out forty-five fathoms of chain, "the shackle just beyond the bitts," subsequenlty,

eleven fathoms more were paid out; so that, at the time of the collision, which is now the subject of controversy, the *Euryale* rode at a single anchor with fifty-six fathoms of chain. "My port anchor," says her Master, Paryon, "was down on the night of the collision, fifty-six fathoms of chain from the bitts, the last time I was on board—I quitted on Saturday at four o'clock," (fols. 23, 24).

The anchor at which she rode weighed 3,515 pounds, which, according to the testimony of her first officer, Brazier, was double the size usual for a vessel of her tonnage. "The ordinary weight of anchors, for a vessel of her size, would be about 1,750 pounds" (fol. 47.)

On the 18th, day of December, the American ship *Sapphire*, of about thirteen hundred tons burden, was brought to anchor a short distance, "in a south-easterly direction, from said transport, *Euryale*," and a little further out from the city front. The port anchor of the *Sapphire*, at which she rode, weighed from thirty-six hundred to thirty eight hundred pounds. "I had down," says her Master, Captain Boyd, "the port anchor, about fifty fathoms of chain out, it weighed between 3,600 and 3,800 pounds." (fols. 19, 93).

The distance at which the latter vessel was anchored from the *Euryale* is variously estimated by the witnesses, to have been from a cable's length, ninety fathoms, to three hundred yards, or one hundred and fifty fathoms. The claimants, in their answer, state the distance to have been three hundred yards. (fols. 48, 192, 19).

The two vessels remained in these positions in safety until about 5 o'clock on Sunday morning, the 23d, day of December, when they collided with and did great damage to, each other. For the damage sustained by the *Euryale*, the District Court decreed to the libellant the sum of $15,000. This decree was, on appeal, affirmed by the Circuit Court from which the present appeal is taken.

The question to be discussed is, did the collision happen in consequence of negligence on the part of those having charge of the claimants' vessel, or, was it the result of inevitable accident, or a *vis major*, which human skill and precaution, and a proper display of nautical skill could not have prevented. The question is purely one of fact, and has been twice passed upon in favor of the libellant. *Newell* vs. *Norton and Ship* 3 Wal. 257. *The Hypodame* 6 Wal. 216.

At the time of the collision a southeasterly gale was prevailing, which is well described in the answer as "a gale of unusual violence and duration." (fol. 19).

It is charged in the libel that the disaster was in consequence of the dragging of the *Sapphire's* anchor, and that her officers and crew were negligent in this respect, not exercising proper watchfulness, care and skill to prevent such an occurrence.

The claimants aver that the "*Sapphire* swung at her anchor during said time without dragging at all," but that "said transport *Euryale* ran into and collided with the said ship *Sapphire*, without any negligence on the part of her officers or crew," and, that the whole of the damage was occasioned,

"solely and exclusively, by reason of the fault and negligence of those in charge of the *Euryale*." (fol. 19).

It is not, however, charged that the *Euryale* dragged her anchor, nor are any of the particulars, by which it is sought to charge the occurrence to the fault of the latter vessel, specified in the answer.

If the collision was the result of fault on the the part of those having charge of the *Sapphire*, it is to be attributed,

1st, To negligence, in not seasonably letting go a second anchor, or,

2nd, To her being anchored too near the *Euryale*.

The first question that naturally presents itself is, could the *Sapphire*, under the circumstances of position, wind and tide, have dragged upon the *Euryale*?

To repel the charge in the libel, that the collision was in consequence of the dragging of the *Sapphire's* anchor, the claimants, in addition to the testimony of the officers and crew of the *Sapphire*, taken by deposition, called a number of witnesses professing familiarity with maritime affairs, and a knowledge of the currents and course of the tides in the Bay of San Francisco, and took their opinions upon that question. Their opinions are, however, so adverse to each other, and some of them so opposed to the theory of the claimants, that it is believed they do not in any degree strengthen their case. Their testimony will be first disposed of, but not made the subject of extended comment.

Mr. Goodall, who had been Harbor Master at

San Francisco for three and one half years, and who may well be supposed to be, as he says he is, "pretty well acquainted with the tides and currents" in the harbor of San Francisco, says, "if the wind was southeast and the tide ebb, the *Sapphire* would drift astern of vessels in position." * * * * "She would come *very near* the *Euryale*, but go outside. With a *flood-tide* the *Sapphire* might touch the *Euryale*, especially if the water was high in the upper rivers, this would deflect the tide towards the wharves." He adds, "I do not see any way in which the *Euryale* could have dragged her anchor and collided with the *Sapphire*, if the *latter* remained at her anchorage without dragging."(fol. 43).

That the water was high "in the upper rivers" is fairly to be supposed from the time at which the collision occurred, December 23d, weeks after the rainy season had set in.

Captain Mayo does "not agree with Goodall and McNear, that she would drag to the eastward with a flood-tide; can't say whether she would drag at all with a flood-tide."

Warsaw is of opinion that "she would have dragged to the south by west or south by east," a difference of 90° in the lines of drift, while Batchellor, does not think that "either vessel would drift on a flood-tide."(fol. 45).

These gentlemen are, therefore, of different opinions as to the direction the vessel would have dragged, if she dragged at all, but only one of them, Mr. Goodall, a former Harbor Master, of more than three years experience in that capacity, expresses the opinion that she might have drifted foul

of the *Euryale*. Now, in connection with his testimony, the query naturally arises, are the opinions of the other experts, that she could not drift upon the *Euryale*, of any value? Entertaining as they do, diverse opinions as to the direction of her drift, why is not an opinion, or a conjecture, that she *might* drift upon the *Euryale*, of equal value. The wind was from the southeast, blowing a heavy gale, the tide running flood and tending towards the city, or from the *Sapphire* towards the *Euryale*.

Aeston, third mate of the *Sapphire*, the only witness who attemps at any time to describe the force of the wind, except by the general term of a gale, etc., says, that when he came on deck at twelve o'clock, some five hours before the disaster, "it was blowing a six knot breeze, and the wind was increasing." * * "The wind kept increasing up to the time of the collision." (fol. 59). At this time the force of the wind must have been at least double that of the tide. The master of the *Euryale* says, "My opinion is, that the wind that night had twice the force of the tide." Upon equal surfaces, therefore, the wind must have exerted greater, if not double the force of the tide. It is true that the *Sapphire* drew twenty-three feet of water at the time, but the tide could not have exerted the same force upon her bottom as it would have done had the weather been calm, the sea and motion of the vessel preventing the whole of the surface below the water-line from being exposed at the same time to the action of the current. Again, the *Sapphire* was, notwithstanding her draft of twenty-three feet, high out of the water. The

Euryale was about thirteen feet, from the water to the top of her rail, and the *Sapphire* was about eight feet higher than the former vessel. She was, also, more heavily sparred than the French vessel, and, with her sails bent, ready for sea, presented a great surface upon which the wind could act. It is, therefore, but reasonable to believe that the wind must have exerted a greater degree of force than the tide upon the vessel. A number of witnesses on both sides, testified, that a loaded ship would be more steady on the tide than a light vessel, because the wind would have more effect upon the latter vessel, that is, because she would be higher out of water, and consequently have less surface exposed to the action of the currents of the latter element than to the force of the former. It is not a question of lading, or draft of water simply, but what was the surface under water upon which the tide could act, compared with that out of water upon which the wind could act. In the present case, as already suggested, the *Sapphire* must have had more surface exposed to the wind than to the tide, and when the greatly superior force of the wind is also taken into consideration, it would seem to follow, as an inevitable deduction from the doctrine of forces, that she must have yielded to the force of the wind, and if she drifted at all, have drifted, not against it, but to some degree with it, or to the north and west, while the tide, deflected by the waters of the "upper rivers" towards the city front, as testified to by Captain Goodall, would tend strongly to break her direct drift with the wind, and urge her towards the *Euryale*. Again, if the *Sapphire*

turned across the tide, which she might do, and still keep to the leeward of her anchor, she would present a greater surface of hull for the wind and sea to act upon, and then, if she "flew about considerably," as Batchellor thinks she did, or "veer about promiscuously," as McNear thinks both vessels did on the flood tide, being heavily laden, the strain upon her chain must have been immense when she ran out upon it, and be very likely to cause her anchor to break ground and drift against the tide. Even Waterhouse, the mate of the *Sapphire* says, "it is generally supposed that vessels will drift with the wind." "In my opinion," says Captain Paryon, "the *Sapphire* veered across the tide and wind, when the flood became strong, and dragged her anchor. * * * As the wind and tide were in opposite directions, and the wind twice the strength, she must have dragged down on us, and would have cleared us, if her anchor had not taken our chain." (fol. 46).

Both Brazier and Le Noir, the first and third officers of the *Euryale*, testified that the *Sapphire's* anchor caught the *Euryale's* chain. "The *Sapphire* would not have touched, if her anchor had not hooked in our chain." (fols. 28, 37). Some of the claimants' witnesses, however, draw a different inference from the position of the chains of the vessels after the collision. McNear says "The fact that one chain was underneath '*ours*,' shows that "*we*" could not have dragged over her chain." Peck, another witness for the claimants, says, "the *Sapphire* would not have dragged her anchor over the *Euryale's* chain." (fol. 44). Now, how the *Sapphire's* anchor, if it

dragged, could have become entangled in the chain of the *Euryale*, without the chain of the former vessel being over that of the latter, it is impossible to perceive, as it is certain that it could not have dragged under it. The fact, therefore, that the *Sapphire's* chain was over that of the *Euryale*, instead of tending to show that the *Sapphire* did not drag her anchor, is quite conclusive that she did.

That the *Sapphire* could drift against the tide is rendered certain by the testimony of several of her officers, and that of the first officer of the *Cleopatra*.

Sprague, the second officer of the *Sapphire*, says, that at 5 o'clock on the morning of the disaster, "her chain was slack, because the wind was blowing from the southeast, and sheered her up against the tide." fol. 50. Aeston says, "at the time of the collision the tide was running strong, and the anchor was tending off her port bow; the wind was so strong that it kept our stern down to the town, towards North Point."(fol. 60). This testimony clearly shows, that at the time of the collision the force of the wind was superior to that of the tide, otherwise her anchor could not have "tended off her port bow," and her stern been kept "down to the town, towards North Point," nor could the wind have "sheered her up against the tide."

Aeston also testified that, while the vessels were in contact, "I saw we were dragging by the ranges I had on shore. I went to the Mate and told him we were dragging down on the *Cleopatra*."(fol. 65).

Waterhouse, the first officer of the *Sapphire*, testified that while in collision, "I think the vessels dragged a little to the leeward, down the harbor."

(fol. 84). "If she dragged she dragged to the northward and westward, can't say how much." (fol. 88).

Patterson, the chief officer of the *Cleopatra*, says, "after they run in collision, both ships drifted over toward the *Cleopatra*. I am positive of that." (fol. 68.) Now the *Cleopatra* was nearly astern of the *Euryale*, the latter vessel being a little off the port bow of the former, as shown in the diagram annexed to the deposition of the witness. (fol. 70.)

Assuming this testimony to be true, it is evident, that after the collision, and while both vessels were in contact, they did drag with the wind and against the tide, and in a direction towards the *Cleopatra*, to the northward and westward; but if they dragged in this direction immediately after the collision, why not drag in that direction before, if either of them dragged at all? It may be remarked here, that there is no pretence that the *Euryale* dragged upon the *Sapphire*, except in the opinion of Aeston, and if his testimony in this respect be true, she must have first collided with the city front, as he says, "I dare say she sheered in all six hundred yards." (fol. 60).

Captain Goodall says, "I don't see any way in which the *Euryale* could have dragged her anchor and collided with the *Sapphire*, if the latter remained at her anchor without dragging." (fol 41.) No sufficient reason seems to exist why the *Sapphire* should have dragged, in a northwesterly direction, while in contact with the other and not before, if she started her anchor. It may be said, that the two vessels being together would exert a greater strain upon the chain, but this additional strain, if any, must have

been very slight, as the vessels lay alongside, one under the lee of the other, and consequently exposed no greater surface of hull to the wind. And any difference in strain, caused by the wind acting upon the spars of the *Euryale*, must have been more than balanced by the starboard anchor of the *Sapphire*, which was let go at the moment of the collision, and which was about two hundred pounds heavier than the port anchor. It is true that Harrison (fol. 24.) Paryon (fols. 25. 46.) Brazier (fols. 36. 37.) Rioux (fol 42.) deny that the vessels drifted while in collision; it is probable that they did not, but, if they did drag while in contact with each other, then it must have been to the northward and westward, as the same witnesses who testified to the fact of their dragging at this time, also testified that this was the direction of their drift. That they would have drifted in this direction, if they drifted at all, seems to be made certain by the testimony of the mate of the *Cleopatra*: "We gave the *Cleopatra* more chain. It was between twelve o'clock Saturday night and six o'clock Sunday morning. It increased the distance between the *Euryale* and the *Cleopatra*." "Was it before or after the collision?" "It was before." (fol75.) Now, on this evidence, it is clear that the *Cleopatra* drifted with the wind to the leeward when more chain was given her, because "it increased the distance" between her and the *Euryale*, while the reverse must have been true if she had gone with the tide to the windward. Now, if the *Cleopatra* drifted against the tide when more chain was given to her, then the *Sapphire*, must have been riding to the leeward of her anchor, and if she dragged she

must have gone in the same direction. It is, therefore, submitted that there is nothing in the evidence inconsistent with the theory that the *Sapphire* might have dragged to the northward and westward, and upon the *Euryale* on the flood tide, particularly when it is remembered that when the *Cleopatra*, which lay to the leeward of the *Euryale*, paid out more chain, the effect was to "increase the distance" between the two vessels.

The next inquiry is, did she drag upon the *Euryale?*

The first important consideration is the position in which the *Sapphire* was on the morning after the two vessels had been separated.

Captain Harrison, called by the libellant, testified, "I had been particular in anchoring the *Euryale*—her *mizzenmast*, on the ebb tide, lined with the middle of Pacific street. After the collision, I found the *Sapphire* lying with her *foremast* in exactly the same position on the ebb tide. This was the morning after the collision." (fol. 24).

Paryon says, "I had usually seen my ship from Pacific street, except the bowsprit. When I went down, on the morning of the collision, the *Sapphire* was in her place." When I arrived on the wharf, the *Sapphire* was in the place where the *Euryale* had been anchored—*a little to the northward of it.*" (fol. 25).

Now, by the positive testimony of these witnesses, the *Sapphire* is found, a few hours after the collision, in the place where the *Euryale* lay the night before—some three hundred yards, according to the claimants' answer, from where she was originally anchored. This evidence is not contrapicted

by any one, except Sprague, the second mate of the *Sapphire*. He says, "We remained in the same position that we were in before the collision—bearings the same—am certain of that." The testimony of this witness is wholly unreliable. He is not only contradicted in material matters by the other officers of the *Sapphire*, but makes statements that upon the face of them bear the marks either of ignorance or untruthfulness. For instance, he says that the second anchor of the *Sapphire* was let go half an hour before the collision.(fol. 54.) He is contradicted in this by every other officer of the ship. He says the *Sapphire* was anchored from two to three hundred yards from Pacific-street wharf. That the French bark was not anchored in the stream when the *Sapphire* was brought to anchor. In this he is contradicted by Harrison, Paryon, Waterhouse and Boyd. The latter says the distance at which he first anchored from the *Euryale* "was about ninety fathoms," (fol. 92.) and Waterhouse testified that "when the *Sapphire* took her position and anchored, she was within a cable or a cable and one half length of the *Euryale*," as near as he could judge. (fol. 82.) While Harrison, the Mare Island pilot, who took the *Euryale* to her anchorage off Pacific street wharf, says, "she was about six hundred yards from the end of the wharf," and Paryon says, "she was anchored by Captain Harrison about six hundred or seven hundred yards." (fol. 24.)

It is to be remarked, that the pilot, who anchored the *Sapphire*, was not called by the claimants. He certainly would have known, at least very nearly, at what distance from the *Euryale* he anchored her, what

her bearings were from the city, and, in all probability, whether she had changed her original position. If she had not changed her position, any evidence, tending to prove that she had not, would have been of great value to the claimants. The absence of this gentleman at the trial, is not without its significance.

In addition to the testimony of Paryon and Harrison, as to the position of the *Sapphire*, after the *Euryale* had been taken from the scene of the disaster, the testimony of Mr. Frées, who took up the anchor of the *Euryale*, which she slipped after the collision, is important. He found the *Euryale's* port chain over "the port anchor fluke of the *Sapphire*, at about fifteen or twenty fathoms from the stock of the *Euryale's* anchor. The starboard anchor was also foul of the same chain, but further up towards the bits. The fouling of the starboard anchor is of no moment, if it be true that that anchor was not let go till the moment of the collision; because, in that case, it could not have contributed to the accident. Captain Boyd says, and he seems to have volunteered the statement, "I took the precaution to take up our anchor since the collision to see if it was foul. I found it perfectly clear." "It has been moved a very little, perhaps twenty feet, in lifting it to see if it was clear." This was the second or starboard anchor.

Sprague says, "we took up our starboard anchor after the collision. We have not yet lifted the other anchor, have made no attempt to lift it."(fol. 55.) But the port anchor, the anchor at which the *Sapphire* was riding before the gale, was foul of the *Euryale's*

chain, and Frées is of opinion that she was riding at the *Euryale's* chain. He further says, that he broke his purchase in attempting to raise the anchor, that it was a powerful purchase, one with which he had raised the 4,000 pound anchors of the *Aquilla*, that the anchor had a pretty good hold, "it seemed to me in the same position as when let go." (fol. 38.)

This evidence is of the strongest character, to show that the *Euryale* did not drag. So strongly grounded was her anchor, that powerful machinery, which had raised those of much greater weight, was broken in the fruitless attempt to lift it, and the aid of a steam-tug was called to effect that purpose. But the *Sapphire's* port anchor was then within fifteen or twenty fathoms of it, foul of the chain. How came it there? about three hundrad yards, according to the answer, from where it was originally let go, and one hundred and eighty yards, according to the lowest estimate, that of Captain Boyd. The answer is to be found in the opinion of Frées, given on his cross-examiaation: "My opinion always was that the port anchor got foul by dragging." (fol. 39) An opinion fully warranted by the circumstances to which he testifies, to say nothing of the testimony of Captains Harrison and Paryon.

In this connection, the conversation between the commanders of the respective vessels, as testified to by Paryon and Dubedat, is of importance. The *Fortuna*, 8 Wal. 590.

It appears that they met at a restaurant on Montgomery street, whether accidental or otherwise is, perhaps, unimportant, as there is no pretence that the interview was sought by the Captain of the *Euryale*.

Dubedat says, "Captain Boyd, it was easy to see, came to see Captain Paryon." In this conversation Captain Paryon called the attention of Captain Boyd to the fact, that the *Euryale* was anchored to the leeward of the *Sapphire*, and told him that, with a southeast wind, he could not go to the windward and foul with the *Sapphire*. To which Captain Boyd replied, "that is true, it was I that got foul of you; it was my fault; it was the fault of the weather," and that if Captain Paryon commenced a suit against him "he would be discharged by his owners; that he was very unhappy." Captain Paryon, then, through Mr. Dubedat, who was present, proposed that he should go before the Consul and repeat what he had just said, and the matter could be arranged readily, that if he would not do this, he should be obliged to sue him, as it was Paryon's only means of justification. Captain Boyd left, saying, "I will see about it."(fol. 25'.

Dubedat also says, "Captain Boyd came to our table, and the first thing he said was that the *Euryale* had come on to the *Sapphire*. Captain Paryon pointed out the position of the ships on the napkin or table-cloth, and asked him if it was possible that the *Euryale* could have come on the *Sapphire*. Captain Boyd said, "no; that it was impossible. He said it was very unfortunate for him, as he should lose his position." The further conversation, about going to the Consul's, with a view to avoiding a suit, is confirmed by Dubedat. Captain Boyd then left, saying, "I will see about it."(fol. 29).

The declaration, with which Captain Boyd opened the conversation, that the *Euryale* came upon the

Sapphire, was a perfectly natural one for him to make, in the "unhappy" state of mind in which he then was, caused by the disaster; but when Captain Paryon pointed out to him the position of the two vessels, and said to him, "Captain, you are a sailor, perhaps a better than myself, but you forget that I am one," and asked him if it were possible for the *Euryale*, under the circumstances, to drift upon the *Sapphire*, saying, "I was anchored to the leeward of you, and with a southeast wind; I could not go against the wind and get foul of you." Captain Boyd replied, not as a master whose reputation and employment were at stake, but as a sailor in the dispassionate exercise of his knowledge of and judgment on, the circumstances of the disaster, and said, "That is true, it was I who got foul of you."

There does not seem to be any reason to doubt that this admission was made by the Captain of the *Sapphire*, and if made, it is one of the strongest character against the claimants' case, direct and unequivocal, and seems to be conclusive upon the question of the dragging of the *Sapphire*. But this question is not to be determined upon the testimony on which comment has been made. That of other officers and a part of the crew of the *Euryale*, is to be examined, as well as some of the testimony for the claimants.

Le Noir, the second officer of the *Euryale*, says, "That at 3 o'clock the chief of the watch reported to him that the *Sapphire* was approaching them. He also reported that they, (the *Sapphire*) had paid out more chain, to which Le Noir replied, that it was not then surprising that she should have come

nearer, thus showing that at that time he believed that she would drift to the leeward. "When I came on deck the *Sapphire* seemed to have got nearer to us, I cannot judge how much." This testimony is confirmed by that of Deveux, the chief of the watch, and Roux, one of the watch.(fols. 18, 41).

It is evident, therefore, from the testimony of these three witnesses, that the *Sapphire* approached and came upon the *Euryale*, because, while they testify directly to this, they also say, as well as Mr. Brazier, that the *Euryale* had not moved from her anchorage, but remained in the same anchorage as before the gale. Again, Captain Boyd not only says, "I will not swear that the *Sapphire* did not drag," (fol. 105), but his reasons for getting ready to let go his second anchor are significant, and suggest that he entertained the idea that the *Sapphire* was dragging at the time, and that he knew, or had reason to believe it to be so. He says, "My vessel sheered *very little, if any.*"(fol. 100). He then says, in another part of his deposition, "I had a man prepared to let go the second anchor, half a minute before the collison."(fol. 100). Again, "My object in letting go the second anchor was to get two anchors wide apart, to *prevent the veesel from shzering.*" (fol. 101). Twenty or thirty minutes before the collision "the "Mate asked me at that time if I thought we were "any nearer that vessel. I replied, I could not "tell. I ordered the second anchor let go, and the "second mate to the wheel to sheer the vessel, so "as to get her in a proper position to let it go. "before the order was fulfilled the *Euryale* was upon "us."(fol. 101).

Is it not evident from this testimony that he had reason to believe that his vessel was dragging, that the Mate also thought so, and called his attention to it, otherwise he would not have ordered the second anchor let go, as the previous reason which he assigns for doing so is clearly absurd. Why, if his vessel "*sheered but little, if any*," should he let go, just before the collision, his second anchor, to prevent her sheering, or, in other words, to prevent her from doing what she had not done, and, as the tide was strong flood, and she had lain across it quietly for half an hour, which she would be less likely to do than when the flood was young.

Again, the particulars of the damage to the respective vessels, are useful, so far as they tend to throw light upon the cause of the accident, and, in this respect, they are believed to be of considerable importance.

The theory for the libellant is, that the *Euryale* was heading to the south-east; that the *Sapphire*, dragging her anchor was swept down upon the former vessel, in such a manner that, her anchor fouling with the *Euryale's* chain, the starboard bow of the *Sapphire* struck the *Euryale* in, or just abaft her starboard main rigging. There seems to be no material difference in the testimony on either side, as to the point of contact when the two vessels first came together. All agree that the starboard bow of the *Sapphire* and the starboard side of the *Euryale* were the parts in contact, and that the point of contact on the *Euryale* was at, or just abaft her starboard main rigging. The only difference is, as to which struck the other.

The Master and officers of the *Sapphire*, testified that the *Euryale's* quarter struck the bow of the *Sapphire*, instead of the bow of the latter vessel striking the quarter of the former.

Sprague says, "At the time she struck we were heading northwest."(fol. 51). "She swung her starboard side to our starboard side, and we remained in that position until towed off."(fol. 56.

Aeston says, "When the two vessels came together our head was heading in town, when she first struck us." (fol. 65.)

Waterhouse says, "At half past 4 o'clock she the *Sapphire*, laid across the tide, wind heading towards town."(fol. 82). "Her (the *Euryale's*) starboard quarter struck our starboard bow, that let go our starboard anchor, and she swung alongside of us side by side."(fol. 83).

Boyd says, "when she first struck, our ship was heading a little inshore. The *Euryale* was heading in an opposite direction to us." "She struck us on the starboard bow and came right round alongside. I was below when she first struck, but was on deck when she came alongside. * * * When I first saw her, she was coming right alongside." (fol. 96) I think her *stern* struck us first, and that she swung round. She swung alongside of us with her starboard side. At the time she first swung alongside of us, our ship was heading a little inshore—she was tending a little inshore; the *Euryale* was heading in an opposite direction from us." (fol. 97)

Now the direction in which the vessels were heading at the moment of the contact is perfectly con-

sistent with the proposition, and with all the testimony of the libellant, that the *Sapphire* struck the *Euryale* on the starboard quarter, which the probability is, she must have done if she dragged down upon her.

None of the witnesses pretend that at any time the *Euryale* was under the bows of the *Sapphire*, but that she swung immediately alongside. Yet the *Sapphire* had "her martingale carried away, and all the chains attached; head partly carried away; bowsprit shroud broken; bobstay broken; and jibguys carried away." (fol. 69) This injury would necessarily have been done had she struck the *Euryale* in consequence of her port anchor fouling with the *Euryale's* chain, as when checked by bringing up on her chain, the strain on that would have swung her head to the starboard, or into the *Euryale*, and have done exactly what it did do, swung her to the windward. The opinion of Paryon is, "as she dragged she went round a little heading to the tide, as she had nothing to keep her to the wind." In dragging she hooked the *Euryale's* chain, "this brought her up, and brought her starboard bow on my starboard quarter. Both vessels swung round, and she fell along side of me, so that we came round to the windward of her," (fol. 46.) On the other hand, had the *Euryale* struck, by swinging or otherwise, her starboard quarter upon the *Sapphire*, in such a manner as to inflict the above damage to the head and head-gear of the *Sapphire*, her own cabin which was on deck, and extended flush with her sills to within one foot of the mizzen mast, must have been, to a great extent damaged, if not demolished; yet

it does not appear from any testimony that the cabin was damaged at all. But it does appear from the testimony of Simons, (fol. 119.) that she was damaged amidship, below the waterline. A result that might well have been expected from the *Sapphire* striking her at the main rigging, but hardly to have been expected from the *Euryale* striking the bow of the *Sapphire* with her starboard quarter. This view of the case is confirmed by the direct testimony of Le Noir and Deveux. Le Noir says, that "the *Sapphire* struck about the middle of the main rigging—her starboard bow struck us." "When I came on deck at five o'clock, the *Sapphire* was heading about north northwest—we headed then southeast. Her bow was about opposite our starboard main rigging. She was then about thirty feet off. Her starboard bow struck us on the starboard side just abaft the mainmast," (fols. 29, 30, 31.) This is confirmed by the testimony of Roux and Deveux. The latter says; "we were struck near the starboard main chains by the *Sapphire's* starboard bow—the *Sapphire* came alongside," (fol. 11.)

On the foregoing view of the testimony, it is submitted that the *Sapphire* started her anchor and dragged down on the *Euryale*, striking her on the starboard side with the starboard bow. This being the case, the *Sapphire* was clearly in fault, and the collision was the result of that fault alone. The officers of the *Sapphire* were bound to know whether their vessel was dragging or not, and were bound to use all possible nautical skill and measures to prevent it. They had the means at hand for that purpose—the starboard anchor, heavier than

the port anchor, was hanging at the cat-head ready to be let go at any moment, and that it could have been let go almost instantly, more than one of her officers bear testimony. Capt. Boyd says, "it was all ready to let go; range of chain overhauled; could have been let go in a second," (fol. 93.) They were aware that the gale was of unusual violence. Boyd, her master, says, "when I first came up it was blowing very heavy; much stronger than I expected," (fol. 94.) This was between three and a half and four o'clock. The master and officers apprehended danger, and as the answer avers, "all the officers and crew of said ship *Sapphire* were on deck ready to adopt and use any and all measures to prevent any danger or accident happening to said ship *Sapphire*." Yet the measure that the most ordinary prudence would have suggested, they failed to adopt, that of letting go the second anchor. It was only a few moments before the collision that the order to let it go was given, and before the order could be executed, the accident happened. Their ship was of more than 1,300 tons burden, presenting great surface to the action of the tide, the wind, and the sea. Heavily laden, and consequently exerting a great strain upon her chain, and therefore very liable to drag from her moorings, the night so dark that her mate was in doubt whether he was nearer "that ship" or not, and the master, when his opinion was asked upon the subject, replying that he "could not tell," (fol. 101.) And yet the second anchor, which, had it been let go in season, would have averted the accident, remained hanging to the

cat-head ready to be let go "in a second," until it was liberated by the shock of the collision.

In the language of the Supreme Court, in the case of *The Louisiana*, 3 Wall. 173, "the collision "being caused by the [*Sapphire*] drifting from her "moorings, she must be liable for the damages "consequent thereon, unless she can show affirma- "tively that the drifting was the result of inevitable "accident, or a *vis major*, which human skill and "precaution, and a proper display of nautical skill, "could not have prevented." It is no excuse to say that she was sufficiently moored with reference to the weather as it was when she went into the stream, because, again quoting from the opinion of court in the case of *The Louisiana*, "if the wind "and tide could have been reasonably expected to "remain, when according to the mate's idea, the "vessel was lying so *nice to the wharf*," or, as it is said in the present cause by the second mate of the *Sapphire*, *lying still and comfortable*, "we should not "have heard of this case. So long as things were "in the condition that they were, when the vessel "was first moored, she was sufficiently secured to "meet any stress or force likely to be opposed by "her," but when the wind rose to "a gale of un- usual violence," and that too, at a season of the year when the harbor of San Francisco is liable to be vexed with heavy southeast gales, the necessity for letting go the second anchor "ought to have "suggested itself to a person of nautical skill as a "proper precaution against a danger which might "justly have been anticipated. The fact that the 'captain and mate did not anticipate the breaking

"away of the vessel"—which in the present case they evidently did—"may prove their want of "judgment, but not that the accident was inevi-"table."

As before observed, it is not claimed in the answer nor is there ground to contend, that the *Euryale* could have dragged her anchor. and drifted to windward, in a gale of such violence. The collision must, therefore, have been caused, either by the dragging of the *Sapphire's* anchor, or else by the veering about of the vessels, during the gale, the anchors of both remaining firm.

If the distance between the vessels, when first anchored, was as great as the answer states it to have been, then the latter hypothesis is untenable.

The united length of their chains was 106, fathoms, or 212 yards, the distance between them is averred to have been 300 yards. Even supposing that the length of chains is computed from the water's edge, and not from the bits, and making no allowance for the depth of the water, and assuming both chains to have been drawn *taught*, it is evident, that the vessels would, though swinging in opposite directions, have cleared each other, at most the quarter of one might have struck the quarter of the other. It is not disputed that the bows of the *Sapphire* and the side of the *Euryale* came in contact. To maintain, therefore, the theory that the two vessels came in contact, while veering about under the opposing forces of the wind and tide, it must be assumed that the distance between the vessels, when first anchored, was much less than alleged in the answer. On this

supposition, it is submitted that the claimants are in the fault.

The *Euryale* was first anchored and had a right to a clear berth. It was the duty of the *Sapphire*, when she anchored so near that the vessels, when veering about in a gale, would be liable to collide, to drop a second anchor. Had she been thus moored the collision could not have occured as described by the claimants.

It is therefore respectively submitted that the decree of the Circuit Court should be affirmed with cost and damages.

MILTON ANDROS.

of Counsel for Appellee.

PRINTERS
SAN FRANCISCO

Supreme Court of the United States.

December Term, 1870.—No.

THE SHIP SAPPHIRE, TRUEFANT, AND ANOTHER,
CLAIMANTS AND APPELLANTS,

vs.

NAPOLEON III, Emperor of the French,
APPELLEE.

Supplemental Brief for the Appellee.

C. CUSHING,
Of Counsel for France.

McGILL & WITHEROW, Printers and Stereotypers, 1107 E street, Washington, D. C.

Supreme Court of the United States.

DECEMBER TERM, 1871.

THE SHIP SAPPHIRE, TRUEFANT, AND ANOTHER, Claimants and Appellants,

vs.

NAPOLEON III, Emperor of the French, Appellee.

No. —.

SUPPLEMENTAL BRIEF FOR THE APPELLEE.

The counsel for the claimants has filed an additional Brief, having for its object to maintain the following proposition, namely:

"The sovereign of a country, the public rights of property of which have been destroyed or injured by a citizen of another country, cannot maintain suit against such citizen in the judicial tribunals of the country to which such citizen belongs, to recover compensation for the injury. The remedy, and the only remedy, of the foreign sovereign, is by diplomatic correspondence and arrangement between the two countries. The repose of nations and their intercourse with each other cannot be maintained, if sovereign rights are to be ascertained and adjudicated by a suit in the name of the foreign sovereign against a private citizen, by whom they may have been violated."

It is difficult to conceive how the learned counsel for the appellants should have fallen into the grave error, as well of this general proposition, as of each of the special propositions which it comprehends.

Assuming to lay down a doctrine of the law of nations, he

fails to cite a single text or authority of international jurisprudence.

Assuming to state or announce a rule of public law for the courts of the United States, he does not adduce the decision or dictum of any such court in support thereof.

Assuming to ascertain and represent the public law of England, he refers to some few decided cases, in which the right of a foreign Government to sue in the courts of that Kingdom is expressly recognized,—that is, which contradict his hypothesis;—and chiefly relies on a single very recent case, in the litigation of which this point was incidentally reviewed, and (to the contrary of his conclusion) the High Court of Chancery, in the most unequivocal terms, recognized such right on the part of any foreign Government.

The Undersigned proposes, in consideration of the arguments of claimants' counsel, to maintain the following propositions, viz:

1. In Great Britain, the right of a foreign Government, whether monarchical or republican, to sue, in any and all the courts of that Kingdom, is now and always has been recognized, and even with the assertion or admission that the denial of such right would afford just cause of war to the aggrieved foreign Government.

2. The same right is recognized by the tribunals of Continental Europe, and especially by France, on behalf of the United States.

3. Expositors of the law of nations unanimously declare, as the rule of all the countries belonging to the great Christian Republic of Europe and America, that, although a foreign Government, whether republican or monarchical, cannot be compelled to enter into the courts of any country as defendant, yet such Government has full right to appear as plaintiff, equally with any private person, and even equally with the local Sovereign.

4. That right has been repeatedly recognized by the courts of the United States.

I. The law and practice of Great Britain.

1. On this point the following, among many *reported* cases, may be cited:

Emperor of Brazil *vs.* Robinson, 5 Dowling's Practice Cases, 522. (Queen's Bench.)
Queen of Portugal *vs.* Grymes, 7 Cl. and F., 66.
King of Spain *vs.* Machado, 4 Russell, 225; S. C. 2 Bligh, N. S., 31. (Chancery.)
King of Spain *vs.* Hullett, 1 Dow. & Clarke, 160. (Chancery.)
S. C., 1 Clark & Finnelly, 348, (House of Lords.)
Rothschild *vs.* Queen of Portugal, 3 Young & Collier, 594, (Exchequer.)
King of Two Sicilies *vs.* Wilcox, 1 Simons, N. S., (Chancery.)
Emperor of Austria *vs.* Kossuth, 3 De Gex, Fisher & Jones, 174, (Chancery.)
King of Greece *vs.* Wright, 6 Dowling's P. C., 12.
United States *vs.* Prioleau, 2 Heming & Miller, 559, (Chancery.)
United States *vs.* Wagner, Council Reports, 2 Chancery Appeals, 582, (Chancery.)

2. The following suits have been maintained in Great Britain, in the name of the United States, within the last five years, (the Undersigned being counsel in the same,) namely:

The United States *vs.* The Sumter, (Admiralty.)
The United States *vs.* The Rappahannock, (Admiralty.)
The United States *vs.* The Gibraltar, (Admiralty.)
The United States *vs.* The Tallahassee, (Admiralty.)
The United States *vs.* The Alexander, (Admiralty.)
The United States *vs.* Prioleau, (Chancery.)
The United States *vs.* Wagner, (Chancery.)
The United States *vs.* Tait, (Law.)
The United States *vs.* Gudgeon, (Chancery.)
The United States *vs.* Blakely Company, (Rolls.)

And the following in British America, namely:

United States *vs.* Boyd and others, (Chancery.)
United States *vs.* The Georgia, (Admiralty.)

There is an older case, that of the President of the United States *vs.* Drummond, 33 Beavan, 449, the form of which, if not a solicitor's blunder, can only be justified under the particular act of Congress which authorized the suit.

3. In the case of the United States *vs.* Wagner, while it was in the Vice Chancellor's Court, Vice Chancellor Wood said:

"That the right of a Government to sue in the courts of Great Britain is a right upon which there can be no doubt, and which has been recognized from the time of the case mentioned in Rolle's Abridgement, and finally established by the House of Lords in the *King of Spain's Case.*"

Council Reports, 3 Equity, 729.

It is a curious coincidence, that the case in Rolle's Abridgement, Court de Admiralty, (E. 3,) which reappears also in 1 Rolle's Reports, 133, is of the *King of Spain*, (temp. Jacob.)

4. In Hullett *vs.* The King of Spain, Lord Redesdale said, (in the House of Lords:)

"I have no doubt but that a foreign Sovereign may sue in this country; otherwise there would be a right without a remedy. He sues here in behalf of his subjects. And if foreign Sovereigns were not allowed to do this, the refusal might be a cause of war."

1 Dow. and Clark, 175.

Sir Roundell Palmer,—an equally good authority, though not on the bench as chancellor because of his refusal to sacrifice conscience to place,—says: "A State can sue under the name by which it is recognized by the Queen, and the refusal to allow it would be a *casus belli.*"

United States *vs.* Wagner, Council Rep., 2 Chancery Appeals, 583.

5. How, in the presence of all these decisions, and of the established law, uninterrupted by a single dissent or doubt from the time of James I to that of Victoria, was it possible for the claimant's counsel to conceive that foreign Governments may not sue in England?

We conjecture that he failed to be conscious of the existence of the sun in midday by intent observation of some

light fleece of a cloud drifting along the sky. Obscurity with respect to doubtful *incidents* filled his mind, to the exclusion of certainty with respect to the *principal*. We explain as follows:

(*a.*) The courts in England hold that a Sovereign cannot be forced into court by suit.

Duke of Brunswick *vs.* King of Hanover, 6 Beavan, 1.
S. C., 2 House of Lords Cases, 1.
De Haber *vs.* Queen of Portugal, 20 Law Journal, 488.
Wadsworth *vs.* Queen of Spain, *ibidem*.

But that, if a foreign Sovereign appears in court voluntarily as plaintiff, the defendant may then sue him by cross-bill or otherwise. That is not to deny his right to sue, but only to declare its consequences.

King of Spain *vs.* Hullett, 1 Clark & Finnelly, 348.
United States *vs.* Wagner, Council Reports, 2 Chancery Appeals, 582.

(*b.*) The English lawyers and judges, educated almost exclusively in the knowledge of *case-law*, knew how to proceed when a foreign Government, represented by the name of a person, that is, a *monarchical* State, came before them; but they broke down when a *Republic* appeared.

It was the case of the Republic of Colombia, as the union of New Granada, Venezuela and Ecuador was denominated. An ill-informed solicitor, who heard frequent talk of the British Government, supposed that would serve as the name of the Republic, and so brought her into the court, by the name and style of the "Colombian Government." It was a *puzzler* to the judges. They perceived by instinct that the suit could not stand. But a whole generation of lawyers and judges stumbled over the question, until the United States came on the carpet; and then they saw clearly that Colombia, as a sovereign State, had the right to sue, but that she should have sued by the title of sovereignty designated by her constitution.

Compare Colombian Government *vs.* Rothschild, 1 Simons, 94; United States *vs.* Priolean, 2 Heming & Miller, 559.

But, even while at length coming to see that the constitutional name of Colombia was that by which she was entitled to sue, they still stumbled on the question of title, insisting that she should sue by the style of the "State of Colombia," (instead of "Republic of Colombia,") which was as if they should concede the right of the United States of America to sue by the title of "The *State* of the United States of America."

(*b.*) Next, the English lawyers and judges boggled on the question how to obtain *discovery* from a plaintiff Republic.

This question was made in the case of the United States *vs.* Wagner.

Vice Chancellor Wood opined that the President of the United States must act for, or be joined with, the United States.

We, the United States, replied,—the President cannot lawfully, and therefore and will not and shall not, appear as plaintiff, or make discovery on oath, for or with the United States; and so the case went to the Court of Appeals in Chancery.

That court, consisting of the Chancellor, Lord Chelmsford, and the Lords Justices, Sir George James Turner and Lord Cairns, agreed that the President could not be compelled to appear, and so overruled the Vice Chancellor.

But thereupon, said the Vice Chancellor, some *corporeal person* must appear to disclose on oath,—the Attorney General or the Secretary of State. We replied,—No, neither they nor any body else. The United States will make disclosure under their great seal, duly certified by its lawful keeper, their Secretary of State, and in no other form or manner; and, if you do not rest content with this, say so, and we will make it a case of insulted national dignity and honor, quite as full of political meaning as the case of the Alabama. And so we filed our answer under the great seal.

(*c.*) But that a foreign State, of whatever organization, may sue in any of the courts of Great Britain,—chancery, common law, exchequer, admiralty,—we have seen by the citation of cases and the declarations of judges, sufficient to put an end to question or doubt on this point.

II. Continental Europe.

Question has arisen in various countries of the Continent as to what circumstances, if any, suffice to subject the property of a foreign Sovereign, and as incidental thereto his person nominally, to the local jurisdiction.

But no question has been made as to the right of a foreign Sovereign or State to sue.

It suffices to say, as to those countries, that France has admitted the United States as plaintiff in her "judicial tribunals," against sundry persons, subjects or citizens of France, "to recover compensation for the injury" done by such persons to the American Government.

United States *vs.* Arman and others, (Cour Imperiale.)

III. The law of nations.

It would be superfluous to make many citations of this class. It suffices to refer to

Phillimore's Commentaries upon International Law, vol. 2, secs. 109 to 113.

IV. The United States.

The plaintiff's own Brief shows that at a very early day the right of a foreign Government to sue here was recognized by the courts of the United States.

The King of Spain *vs.* Oliver, 2 Wash. C. C., 431.

It seems strange to find the plaintiff's counsel suggesting constitutional objections to the exercise of this right, in presence of the fact of the right being expressly accorded by the Constitution. (Art. 3, sec. 2.)

Suggestion on the part of counsel of the existence of practical inconveniences in the concession of this right are too shadowy and imaginary to be entitled to serious consideration at this time or in this connection. It will be seasonable enough to dispose of such possible inconveniences when they present themselves for the determination of the court.

No such possible inconvenience can stand in the way of the unequivocal provision of the Constitution.

On the whole, therefore, we conclude that a foreign Government, however organized, and whether monarchical or republican, is competent to maintain suits in the courts of the United States.

C. CUSHING,
Of Counsel for France.

IN THE DISTRICT COURT OF THE UNITED STATES,

IN AND FOR THE STATE OF CALIFORNIA.

THE EMPEROR OF THE FRENCH,

NAPOLEON III.

EMPEROR OF THE FRENCH,

VS.

THE SHIP "SAPPHIRE," ETC.

JUDGE'S OPINION.

About 5 o'clock on the morning of December 23d, 1867, a collision occurred in this Harbor between the French Transport "Euryale" and the American Ship "Sapphire."

The French vessel had been anchored on the 14th, by Capt. Harrison, the Mare Island Pilot. The "Sapphire" was anchored some four days subsequently. The distance between the two vessels when riding to the ebb-tide is variously estimated, from a cable's length (90 fathoms) to 250 yards or about 125 fathoms.

The answer avers that the distance was about 300 yards. The libel charges that the collision was caused by the dragging of the "Sapphire's" anchors, and that her officers and crew did not exercise proper care and diligence to prevent this occurrence or avert its consequences.

The answer denies that the "Sapphire" dragged her anchors, and avers that the "Euryale" ran into and collided with the "Sapphire" without any fault on the part of the latter and solely by reason of the fault of the officers of the "Euryale."

It is admitted that at the time of, and for some hours before the collision, a gale of unusual violence from the S. E. had prevailed. It is also averred in the answer that the "Sapphire" was moored in a southeasterly direction from the "Euryale," she therefore lay dead to windward.

It is also very clearly established by the proofs that the starboard bow of the "Sapphire" came in contact with the starboard side of the "Euryale" near her main-chains, the contested point being as to which vessel struck the other.

The "Euryale" had about 56 fathoms of chain out to an anchor of nearly double the size usual for a vessel of her tonnage.

The "Sapphire" had 50 fathoms of chain to an anchor not alleged to be in any respect insufficient.

The testimony is conflicting, nor are the statements of either side in all respects consistent.

Both vessels had a full complement of officers and men.

The deck of the "Euryale" was in charge of a Chef de Division, a petty officer who commanded the watch of eight or ten men, and who was instructed to report to the officer on duty if anything occurred. Reports appear to have been made from time to time during the night, and the officer on duty came on deck on several occasions.

The Mates and crew of the "Sapphire" appear to have been on deck during the whole night, and up to the moment of collision.

The accident is explained by the "Euryale" officers as follows:

Shortly after the flood-tide made the "Sapphire" partly turned to it, so as to head towards the Town, or to the northward and westward. In this position she dragged down towards and inside of the "Euryale," which feeling the tide less, continued to head to the wind. She would probably have gone by or to the leeward of the latter had not her anchor caught or "hooked" the "Euryale's" chain. The effect of this was to bring her starboard bow against the starboard side of the "Euryale." The two vessels then swung around and alongside of each other. The "Euryale" being to windward, and having been forced around so that she headed towards the Town.

The Claimants aver that the collision was caused by the two vessels coming in contact while sheering about under the opposing forces of the tide and wind.

It is not claimed in the answer or suggested in the argument that the "Euryale" could have dragged her anchor and drifted to windward in a gale of such violence.

The collision must therefore have been caused either by the dragging of the "Sapphire's" anchor or else by veering about of the vessels during the gale, the anchors of both remaining firm.

If the distance between the vessels when first anchored was as great as the answer states it to have been, the latter hypothesis is untenable.

The united lengths of their chains was 106 fathoms, or 212 yards, the distance between them is averred to have been 300 yards.

Even supposing that the length of chains is computed from the water's edge and not from the bitts, and making no allowance for the depth of the water, and assuming both chains to have been drawn *taught*, it is evident that the vessels would, though swinging in opposite directions, have cleared each other, at most the quarter of one might have struck the quarter of the other.

It is not disputed that the bows of the "Sapphire" and the side of the "Euryale" came in contact.

To maintain the Claimant's theory therefore we must suppose the distance between the vessels to have been much less than is alleged in their answer, on this supposition it may be well doubted whether they do not admit themselves in fault.

The "Euryale" was first anchored and had a right to a clear berth.

It was the duty of the "Sapphire" when she anchored so near that the vessels when veering about in a gale would be liable to collide, to drop a second anchor. Had she been thus moored, the collision could not have occurred as described by the Claimants.

The Mate of the "Sapphire" states that the distance between the vessels was the length of a cable or a cable and a half, that is, from 90 to 135 fathoms, or from 180 to 270 yards. The Master estimates it at a cables length.

A violent South Easter had prevailed for some hours. The "Sapphire" had 50 fathoms of chain. Her Master might naturally infer that the adjacent vessel had paid out as much. On the flood-tide both vessels would be liable to veer. If the distance between was as he supposed only 90 fathoms a collision might very possibly occur.

It would seem under such circumstances a reasonable and natural precaution to prevent or greatly to check the veering of his vessel by dropping a second anchor, especially as the "Sapphire" was the last comer, and had herself caused whatever danger of collision there was by anchoring near the "Euryale."

That the Master considered it prudent to let go a second anchor is evident from his own testimony. He states that when he came on deck shortly before the collision the Mate asked him if he thought they were any nearer the "Euryale." He replied he could not tell and ordered the second anchor to be let go. The second Mate went to the wheel to give the vessel a sheer, but before the manœuvre could be executed the collision occurred.

Had this order been given earlier the collision could not have occurred if the theory of the Claimants as to its cause be true.

But neglecting to let go a second anchor, was, if Libellants explanation of the accident be true, a much graver fault.

It is insisted that the "Sapphire" dragged her anchor and came down on the "Euryale." That she did so is positively affirmed by the officers and crew of the "Euryale" who were examined as witnesses.

The Master of the "Sapphire" who seems to have testified with much candor and caution, says he cannot swear that his vessel did not drag, he only thought so, from her bearings the day after the collision.

His officers are more positive but the force of their testimony is much weakened by the evident errors into which they have fallen on other material points.

Sprague, the second Mate of the "Sapphire," states that she was anchored from 200 to 300 yards from the wharf. This is evidently untrue for the Harbor regulations forbid the anchoring of any vessel nearer than 500 yards from the wharf, and the "Euryale" was nearer than the "Sapphire."

He states that the French vessel was not anchored when the "Sapphire" took her position. The contrary is admitted to be the fact.

He states that the chain was at no time lengthened. In this he is contradicted by the Mate.

He states that the second anchor was let go half an hour before the collision and that 20 fathoms of chain were let out on it. The Master and Mate both swear that the second anchor was accidentally caused to drop by the carrying away of the ring-stopper when the vessels came together.

Aeaston, the third Mate, swears that the French vessel sheered towards the Town "all of 600 yards."

This was impossible unless she dragged her anchor.

He states that at the time of collision the "Sapphire's" head was to N. E.

Sprague testifies that she headed to the N. W., and in this he is corroborated by the Master and Mate.

Aeaston admits that the "Euryale" was to the northward of the "Sapphire" just before the collision. If the latter vessel was heading to the N. E., her port and not her starboard side would have sustained the injury.

He states that he gave the vessel more chain by the Captain's orders "but it was of no use." In this he is contradicted by the third Mate.

Waterhouse, the first Mate, testifies that after the tide turned, the "Sapphire" lay across the wind and tide, heading towards the Town, the French ship was lying in about the same position. That he noticed her start and run in towards the Town in the direction of Vallejo Street Wharf, "then she backed off, stern first, and came down on us, her starboard quarter took our starboard bow."

I confess myself unable to understand how, if the French vessel sheered towards Town and then backed off stern first, her starboard and not her port quarter could have struck the bow of a vessel lying to windward and heading in the same direction.

It is evident that the testimony of these witnesses must be received with great caution.

The testimony of the "Euryale's" officers is corroborated by other evidence.

Capt. Harrison, the Pilot, testifies that he "had been particular in anchoring the 'Euryale.' Her mizzenmast, on the ebb-tide, lined with the middle of Pacific Street. After the collision I found the 'Sapphire' lying with her foremast in *exactly* the *same position*, on the ebb-tide."

Lieut. Parayou, the Commander of the "Euryale," states, "I had usually seen my vessel from Pacific Street except the bowsprit. When I went down on the morning of the collision, the 'Sapphire' was in the place where the 'Euryale' had been anchored, a little to the northward of it."

If this testimony be true, and I see no reason for discrediting it, it proves that the "Sapphire" must have dragged her anchor.

Mr. Fries, Stevedore, testifies that he was employed to take up the anchor of the "Euryale," which had been slipped after the collision.

He found that the "Sapphire" in heaving on her chain had brought up the bight of the "Euryale's" chain.

"The bight of the 'Euryale's' chain was on the fluke of the 'Sapphire's' anchor." That this was the starboard anchor of the "Sapphire" is shown by the testimony of the second Mate and the Master of the latter.

The second Mate says, "we took up our *starboard* anchor after the collision, have made no attempt to lift the other anchor."

Mr. Fries further states that when he hove in the chain of the "Euryale's" anchor, he found the "Sapphire's" *port* anchor fouled with it, so firm was the hold of the "Euryale's" that he broke his purchase which was of unusual strength. The witness expresses the

opinion that the starboard anchor of the "Sapphire" was fouled with the "Euryale's" chain about 50 fathoms from the anchor of the latter, and the "Sapphire's" port anchor was also fouled with the same chain about 20 fathoms from the anchor. He adds, "I think the 'Sapphire' must have hung to this anchor, my opinion always was that the port anchor got foul by dragging, she (the 'Sapphire') picked up the 'Euryale's' chain with her port anchor first and afterwards with her starboard anchor."

If this opinion be correct, and it seems fully warranted by the facts if they are truly stated, it conclusively establishes the truth of the account of the accident given by the French officers. Mr. Fries has no interest in the controversy. He is a respectable and well-known citizen. His operations must have been conducted in the presence of many witnesses, no one has been called to contradict him or give a different account of the condition of the chains and anchors of the vessels.

The Advocate for the Claimants lays much stress upon a statement by Capt. Harrison, to the effect that it was necessary to move the "Sapphire" to enable the "Euryale" to recover her anchor "*which were right under the 'Sapphire'*"

As the "Euryale" had but one anchor down at any time the use of the plural is evidently inaccurate and may perhaps justify the inference that the witness spoke from report or conjecture.

The statement of the witness seemed to attract little attention from counsel. He does not give his means of knowledge, nor does he pretend to have been present when the "Euryale's" chain and anchor were recovered.

I do not feel justified in discrediting the positive and detailed statement of Mr. Fries, on the faith of this loose and probably erroneous declaration of Capt. Harrison. Some reliance is also placed by the Advocate for Claimants on Capt. Boyd's statement, that "he took the precaution to take up his anchor after the collision to see if it was foul, and that he found it perfectly clear."

That the anchor referred to by him was the starboard anchor appears from a subsequent part of his testimony.

His assertion that it was clear is contradicted not only by Mr. Fries but by his own second Mate.

The latter says, "a bight of the Frenchman's chain was on the bill of the anchor we raised." This is precisely the condition of things testified to by Mr. Fries.

Capt. Boyd admits that though on board his vessel he was not forward when the anchor was taken up. It is possible that the anchor was readily cleared by the "Euryale's" chain, and the fact that it was foul was not reported to, or has been forgotten by him.

But the point is unimportant. The starboard anchor was not let go, until after the collision. It is the port anchor that is alleged to have dragged and to have picked up the "Euryale's" chain.

Several experts have been called to testify that in their opinion the "Sapphire" would not have dragged before a southeast gale and against a flood-tide, and that if she had done so she would not have drifted upon the "Euryale."

But all such surmises have little value in presence of the fact that a collision actually occurred between the vessels.

One, and the most experienced of the witnesses, admits that if she had dragged she might have collided with the leeward vessel, and the other witnesses differ as to the probable direction she would have taken.

If the fact of dragging be admitted it is obviously impossible to define with precision what course a vessel would take before a S. E. gale and against a flood-tide.

Nor can I receive the opinion of experts that a vessel would not drag her anchor before a southeaster and against a flood-tide as of any weight in view of the fact, that the "Sapphire" was found after the collison in nearly the exact position previously occupied by the "Euryale" and her port anchor was fouled with the "Euryale's" chain about 20 fathoms from the anchor of the latter.

The statement of the officers and men of the "Euryale" that the latter headed to the wind all night is sought to be discredited, on grounds of intrinsic improbability and by exposing some errors and discrepancies in the testimony of the crew.

The officer on duty is very positive that she did not veer with the tide. He states that he had a compass in his cabin, and should certainly have noticed any change in the position of the vessel.

Lieut. Parayon testifies that it is very difficult for his vessel to sheer much to one side or the other in a gale of wind, as her house on deck is very high and there are two boats on the quarter-deck.

He adds that he remarked after the collision, and while the gale continued that she did not sheer more than one or two points on either side.

That the "Euryale," at the moment of collision, must have been heading nearly S. E., is evident from the position of the other vessel, as given

by her Master and her first and third Mates, and by the nature of the damage she received.

All the officers of the "Sapphire," except the second Mate, agree that she was heading towards the Town, that is, to the northward and westward, and that the "Euryale" headed in an opposite direction, that is, to the southward and eastward, which must have been the case as the starboard sides of the vessels came in contact.

The statement of the men that more chain was given the "Sapphire" on one or two occasions, is probably a mistake. But it can only be so considered on the assumption that the second and third Mates of the "Sapphire" have made a similar error.

I see nothing in these discrepances, and in some other wild and absurd estimates as to time and distance, &c., which should affect the conclusion to which the great and controlling facts of the case must conduct us, viz.: that the "Sapphire" occasioned the collision by drifting down upon the "Euryale."

It may be added that the correctness of this conclusion seems to have been admitted by Captain Boyd himself, in a conversation with Lieut. Parayou in presence of Mr. Dubedat. This conversation is detailed by both of the gentlemen. The accuracy of their account is not impugned.

But even if this conclusion be rejected and the theory of the Claimants that neither vessel dragged, but that they swung together, while veering about under the influence of the tide, be accepted, then the "Sapphire" is in fault either for occupying a berth too near a vessel already anchored, or for not having sooner dropped a second anchor by which her veering would have been prevented.

No question is made as to the amount of damage done to the "Euryale."

The cost of her reparations as stated by Lieutenant Parayou; and for that sum, with costs, a decree must be entered.

Filed, May 19th, 1868.

GEO. E. WHITNEY, *Clerk*,

By S. I. NEALL, *D. C.*

District Court of the United States

IN AND FOR THE STATE OF CALIFORNIA.

THE EMPEROR OF THE FRENCH.

NAPOLEON III, Emperor of the French,

vs.

THE SHIP "SAPPHIRE," &c.

JUDGE'S OPINION.

C. CUSHING,
Of Counsel for France.

McGILL & WITHROW, Printers and Stereotypers, 1107 E street, Washington, D. C.

In the District Court of the United States,

In and for the State of California.

THE EMPEROR OF THE FRENCH,
Napoleon III,
Emperor of the French,

vs.

THE SHIP "SAPPHIRE," &c.

JUDGE'S OPINION.

About 5 o'clock, on the morning of December 23, 1867, a collision occurred in this harbor between the French transport "Euryale" and the American ship "Sapphire."

The French vessel had been anchored on the 14th by Captain Harrison, the Mare Island pilot. The Sapphire was anchored some four days subsequently. The distance between the two vessels, when riding to the ebb tide, is variously estimated from a cable's length (ninety fathoms) to two hundred and fifty yards, or about one hundred and twenty-five fathoms.

The answer avers that the distance was about three hundred yards. The libel charges that the collision was caused by the dragging of the "Sapphire's" anchors, and that her officers and crew did not exercise proper care and diligence to prevent this occurrence or avert its consequences. The answer denies that the "Sapphire" dragged her anchors, and avers the "Euryale" ran into and collided with the

"Sapphire," without any fault on the part of the latter, and solely by reason of the fault of the officers of the "Euryale."

It is admitted that at the time of, and for some hours before the collision, a gale of unusual violence from the southeast had prevailed. It is also averred in the answer that the "Sapphire" was moored in a southeasterly direction from the "Euryale." She therefore lay dead to windward.

It is also very clearly established by the proofs that the starboard bow of the "Sapphire" came in contact with the starboard side of the "Euryale" near her main chains, the contested point being as to which vessel struck the other.

The "Euryale" had about fifty-six fathoms of chain out to an anchor of nearly double the size usual for a vessel of her tonnage.

The "Sapphire" had fifty fathoms of chain to an anchor not alleged to be in any respect insufficient.

The testimony is conflicting, nor are the statements of either side in all respects consistent.

Both vessels had a full complement of officers and men.

The deck of the "Euryale" was in charge of a chef de division, a petty officer, who commanded the watch of eight or ten men, and who was instructed to report to the officer on duty if anything occurred. Reports appear to have been made from time to time during the night, and the officer on duty came on deck on several occasions.

The mates and crew of the "Sapphire" appear to have been on deck during the whole night, and up to the moment of the collision.

The accident is explained by the "Eurayle's" officers as follows:

Shortly after the flood-tide made, the "Sapphire" partly turned to it, so as to head towards the town, or to the northward and westward. In this position she dragged down towards and inside of the "Euryale," which, feeling the tide less, continued to head to the wind. She would probably have gone by or to the leeward of the latter, had not her anchor caught or "hooked" the "Euryale's" chain. The effect of this was to bring her starboard bow against the

starboard side of the "Euryale." The two vessels then swung around and alongside of each other. The "Euryale" being to windward, and having been forced around, so that she headed towards the town.

The claimants aver that the collision was caused by the two vessels coming in contact while sheering about under the opposing forces of the tide and wind.

It is not claimed in the answer or suggested in the argument that the "Euryale" could have dragged her anchor and drifted to windward in a gale of such violence.

The collision must therefore have been caused either by the dragging of the "Sapphire's" anchor or else by veering about of the vessels during the gale, the anchors of both remaining firm.

If the distance between the vessels when first anchored was as great as the answer states it to have been, the latter hypothesis is untenable.

The united lengths of their chains was one hundred and six fathoms—or two hundred and twelve yards. The distance between them is averred to have been three hundred yards.

Even supposing that the length of chains is computed from the water's edge, and not from the bitts, and making no allowance for the depth of the water, and assuming both chains to have been drawn *taut*, it is evident that the vessels would, though swinging in opposite directions, have cleared each other.

It is not disputed that the bows of the "Sapphire" and the side of the "Euryale" came in contact.

To maintain the claimant's theory, therefore, we must suppose the distance between the vessels to have been much less than is alleged in their answer. On this supposition it may be well doubted whether they do not admit themselves in fault.

The "Euryale" was first anchored, and had a right to a clear berth. It was the duty of the "Sapphire," when she anchored so near that the vessels, when veering about in a gale, would be liable to collide, to drop a second anchor.

Had she been thus moored, the collision could not have occurred, as described by the claimants.

The mate of the "Sapphire" states that the distance between the vessels was the length of a cable or a cable and a half; that is, from ninety to one hundred and thirty-five fathoms, or from one hundred and eighty to two hundred and seventy yards. The master estimates it at a cable's length.

A violent southeaster had prevailed for some hours. The "Sapphire" had fifty fathoms of chain. Her master might naturally infer that the adjacent vessel had paid out as much. On the flood tide both vessels would be liable to veer. If the distance between was, as he supposed, only ninety fathoms, a collision might very possibly occur.

It would seem, under such circumstances, a reasonable and natural precaution to prevent or greatly to check the veering of his vessel by dropping a second anchor, especially as the "Sapphire" was the last comer, and had herself caused whatever danger of collision there was by anchoring near the "Euryale."

That the master considered it prudent to let go a second anchor is evident from his own testimony. He states that when he came on deck, shortly before the collision, the mate asked him if he thought they were any nearer the "Euryale?" He replied he could not tell, and ordered the second anchor to be let go. The second mate went to the wheel to give the vessel a sheer, but before the manœuvre could be executed the collision occurred.

Had this order been given earlier the collision could not have occurred, if the theory of the claimants as to its cause be true.

But neglecting to let go a second anchor was, if the libellants' explanation of the accident be true, a much graver fault.

It is insisted that the "Sapphire" dragged her anchor, and came down on the "Euryale." That she did so, is positively affirmed by the officers and crew of the "Euryale," who were examined as witnesses.

The master of the "Sapphire," who seems to have testified with much candor and caution, says that he cannot swear that his vessel did not drag; he only thought so, from her bearings the day after the collision.

His officers are more positive, but the force of their testimony is much weakened by the evident errors into which they have fallen on other material points.

Sprague, the second mate of the "Sapphire," states that she was anchored from two hundred to three hundred yards from the wharf. This is evidently untrue; for the harbor regulations forbid the anchoring of any vessel nearer than five hundred yards from the wharf, and the "Euryale" was nearer than the "Sapphire." He states that the French vessel was not anchored when the "Sapphire" took her position. The contrary is admitted to be the fact.

He states that the chain was at no time lengthened. In this he is contradicted by the mate.

He states that the second anchor was let go half an hour before the collision, and that twenty fathoms of chain were let out on it. The master and mate both swear that the second anchor was accidentally caused to drop by the carrying away of the ring-stopper when the vessels came together.

Aeaston, the third mate, swears that the French vessel sheered towards the town "all of six hundred yards."

This was impossible, unless she dragged her anchor.

He states that at the time of the collision the "Sapphire's" head was to northeast.

Sprague testifies that she headed to the northwest, and in this he is corroborated by the master and mate.

Aeaston admits that the "Euryale" was to the northward of the "Sapphire" just before the collision. If the latter vessel was heading to the northeast, her port and not her starboard side would have sustained the injury.

He states that he gave the vessel more chain by the captain's orders, "but it was of no use." In this he is contradicted by the third mate, Waterhouse. The first mate testifies that after the tide turned the "Sapphire" lay across the wind and tide, heading towards the town. The French ship

was lying in about the same position. That he noticed her start and run in towards the town, in the direction of the Vallejo street wharf. "Then she backed off, stern first, and came down on us; her starboard quarter took our starboard bow."

I confess myself unable to understand how, if the French vessel sheered towards town, and then backed off, stern first, her starboard, and not her port quarter, could have struck the bow of a vessel lying to the windward and heading in the same direction.

It is evident that the testimony of these witnesses must be received with great caution.

The testimony of the "Euryale's" officers is corroborated by other evidence.

Captain Harrison, the pilot, testifies that he "had been particular in anchoring the 'Euryale.' Her mizenmast, on the ebb tide, lined with the middle of Pacific street. After the collision, I found the 'Sapphire' lying with her foremast in *exactly* the *same position* on the ebb tide."

Lieutenant Parayon, the Commander of the "Euryale," states: "I had usually seen my vessel from Pacific street, except the bowsprit. When I went down on the morning of the collision, the 'Sapphire' was in the place where the 'Euryale' had been anchored, a little to the northward of it."

If this testimony be true, and I see no reason for discrediting it, it proves that the "Sapphire" must have dragged her anchor.

Mr. Fries, stevedore, testifies that he was employed to take up the anchor of the "Euryale," which had been slipped after the collision.

He found that the "Sapphire," in heaving on her chain, had brought up the bight of the "Euryale's" chain.

"The bight of the 'Euryale's' chain was on the fluke of the 'Sapphire's' anchor." That this was the starboard anchor of the "Sapphire" *is* shown by testimony of the second mate and master of the latter.

The second mate says: "We took up our *starboard* anchor

after the collision; have made no attempt to lift the other anchor."

Mr. Fries further states, that when he hove in the chain of the "Euryale's" anchor he found the "Sapphire's" *port* anchor fouled with it. So firm was the hold of the "Euryale's" anchor, that he broke his purchase, which was of unusual strength. The witness expresses the opinion that the starboard anchor of the "Sapphire" was fouled with the "Euryale's" chain, about fifty fathoms from the anchor of the latter; and the "Sapphire's" port anchor was also fouled with the same chain, about twenty fathoms from the anchor. He adds: "I think the "Sapphire" must have hung to this anchor. My opinion always was, that the port anchor got foul by dragging; she (the "Sapphire") picked up the "Euryale's" chain with her port anchor first, and afterwards with her starboard anchor."

If this opinion be correct,—and it seems fully warranted by the facts, if they are truly stated,—it conclusively establishes the truth of the account of the accident given by the French officers. Mr. Fries has no interest in the controversy. He is a respectable and well-known citizen. His operations must have been conducted in the presence of many witnesses. No one has been called to contradict him, or to give a different account of the condition of the chains and anchors of the vessels.

I. The advocate for the claimants lays much stress upon a statement by Captain Harrison, to the effect, that it was necessary to move the "Sapphire" to enable the "Euryale" to recover her anchors, "*which were right under the Sapphire.*"

As the "Euryale" had but one anchor down at any time, the use of the plural is evidently inaccurate, and may perhaps justify the inference that the witness spoke from report or conjecture.

The statement of the witness seemed to attract little attention from counsel. He does not give his means of knowledge, no does he pretend to have been present when the "Euryale's" chain and anchor were recovered.

I do not feel justified in discrediting the positive and de-

tailed statement of Mr. Fries, on the faith of this loose and probably erroneous declaration of Captain Harrison. Some reliance is also placed by the advocate for claimants on Captain Boyd's statement, that "he took the precaution to take up his anchor after the collision to see if it was foul, and that he found it perfectly clear."

That the anchor referred to by him was the starboard anchor, appears from a subsequent part of his testimony.

His assertion that it was clear, is contradicted not only by Mr. Fries, but by his own second mate.

The latter says "a bight of the Frenchman's chain was on the bill of the anchor we raised." This is precisely the condition of things testified to by Mr. Fries.

Captain Boyd admits that, though on board his vessel, he was not forward when the anchor was taken up. It is possible that the anchor was readily cleared of the "Euryale's chain, and the fact that it was foul not reported to, or has been forgotten by him.

But the point is unimportant. The starboard anchor was not let go until after the collision. It is the port anchor that is alleged to have dragged, and to have picked up the "Euryale's" chain.

Several experts have been called to testify that in their opinion the "Sapphire" would not have dragged before a southeast gale and against a flood tide; and that if she had done so, she would not have drifted upon the "Euryale."

But all such surmises have little value in presence of the fact that a collision actually occurred between the two vessels.

One, and the most experienced of the witnesses, admits that, if she had dragged, she might have collided with the leeward vessel; and the other witnesses differ as to the probable direction she would have taken.

If the fact of dragging be admitted, it is obviously impossible to define with precision what course a vessel would take before a southeast gale and against a flood-tide.

Nor can I receive the opinion of experts, that a vessel would not drag her anchor before a southeaster and against a flood-

tide, as of any weight, in view of the fact that the "Sapphire" was found after the collision in nearly the exact position previously occupied by the "Euryale," and her port anchor was fouled with the "Euryale's" chain, about twenty fathoms from the anchor of the latter.

The statement of the officers and men of the "Euryale," that the latter headed to the wind all night, is sought to be discredited, on grounds of intrinsic improbability and by exposing some errors and discrepancies in the testimony of the crew.

The officer on duty is very positive that she did not veer with the tide. He states that he had a compass in his cabin, and should certainly have noticed any change in the position of the vessel.

Lieutenant Parayon testifies, that it is very difficult for his vessel to sheer much to one side or the other in a gale of wind, as her house on deck is very high, and there are two boats on the quarter-deck.

He adds, that he remarked after the collision, and while the gale continued, that she did not sheer more than one or two points on either side.

That the "Euryale," at the moment of collision, must have been heading nearly southeast, is evident, from the position of the other vessel, as given by her master and her first and third mates, and by the nature of the damage she received.

All the officers of the "Sapphire," except the second mates, agree that she was heading towards the town, that is, to the northward and westward; and that the "Euryale" headed in an opposite direction, that is, to the southward and eastward; which must have been the case, as the starboard sides of the vessels came in contact.

The statement of the men, that more chain was given the "Sapphire" on one or two occasions, is probably a mistake. But it can only be so considered on the assumption that the second and third mates of the "Sapphire" have made a similar error.

I see nothing in these discrepancies, and in some other wild and absurd estimates as to time and distance, &c., which should

affect the conclusion to which the great and controlling facts of the case must conduct us, viz, that the "Sapphire" occasioned the collision by drifting down upon the "Euryale."

It may be added that the correctness of this conclusion seems to have been admitted by Captain Boyd himself, in a conversation with Lieutenant Parayon, in presence of Mr. Dubedat. This conversation is detailed by both of the gentlemen. The accuracy of their account is not impugned. But even if this conclusion be rejected, and the theory of the claimants, that neither vessel dragged, but that they swung together, while veering about under the influence of the tide, be accepted, then the "Sapphire" is in fault, either for occupying a berth too near a vessel already anchored, or for not having sooner dropped a second anchor, by which her veering would have been prevented.

No question is made as to the amount of damage done to the "Euryale."

The cost of her reparations is stated by Lieutenant Parayon; and for that sum, with costs, a decree must be entered.

[Filed May 19, 1868. Geo. E. Whitney, Clerk, by S. J. Neall, D. C.]

I, George E. Whitney, Clerk of the Circuit Court of the United States for the district of California, and *ex officio* Clerk of the District Court of the United States in and for said district, hereby certify that the foregoing are full and true copies of the libel, claim, answer, testimony, and opinion of the court, now on file in my office, and of the whole thereof, numbered 1 to 116, 116 A, 116 B, 117 to 147.

Attest my hand and the seal of said District Court, this thirteenth day of January, A. D. 1869.

[L. S.] GEO. E. WHITNEY, *Clerk.*

By —— ——, *Deputy Clerk.*